

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 7
	)	
FACTORY 2-U STORES, INC., A/K/A	)	Case No. 04-10111 (PJW)
FACTORY 2-U, F/A/K/A GENERAL	)	
TEXTILES, INC., F/A/K/A GENERAL	)	
TEXTILES, F/A/K/A FAMILY BARGAIN	)	
CORPORATION, F/A/K/A FAMILY	)	
BARGAIN CENTER,	)	
	)	
Debtor.	)	
	)	
JEOFFREY L. BURTCH,	)	
CHAPTER 7 TRUSTEE,	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	<u>Adv. Proc. Nos.</u>
	)	
SOLED OUT SOCKS INC. /	)	05-30100 (KJC)
GMAC COMMERCIAL CREDIT,	)	
	)	
FAST FORWARD, LLC /	)	05-30156 (KJC)
GMAC COMMERCIAL FINANCE,	)	
	)	
SILVER GOOSE, INC. /	)	05-30463 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
STAR REGENT APPAREL, INC.,	)	05-30476 (KJC)
STAR REGENT INTERNATIONAL INC./	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ATLANTIC HOSIERY, INC. /	)	05-30477 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
PARK B. SMITH INC. D/B/A SMITH AND	)	05-30479 (KJC)
JOHNSON AND D/B/A PARK B. SMITH	)	
LTD., PARK B. SMITH SR. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	

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ISAAC MORRIS, LTD.	)	05-53237 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ISAAC MORRIS, LTD. D/B/A E BABY,	)	06-50004 (KJC)
E-BABY L.L.C. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ALL-WAYS SPORTSWEAR, LTD. /	)	06-50035 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
GREAT WALL CORP. /	)	06-50041 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
OUTERSTUFF, LTD. /	)	06-50132 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
AMERICAN MARKETING ENTERPRISES,	)	06-50220 (KJC)
INC. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
HAYWIN TEXTILE PRODUCTS, INC. /	)	06-50246 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
RK INDUSTRIES INC. /	)	06-50298 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
WIESNER PRODUCTS, INC. /	)	06-50365 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ACCESSORY NETWORK	)	06-50378 (KJC)
GROUP, LLC A/K/A ACCESSORY	)	
NETWORK GROUP /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
AMICA APPAREL CORP. D/B/A SQUEEZE	)	06-50379 (KJC)
KIDS /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
Defendants.	)	

**PLAINTIFF'S RESPONSE TO DEFENDANT GMAC COMMERCIAL FINANCE  
LLC'S MOTION FOR WITHDRAWAL OF THE REFERENCE UNDER 28 U.S.C.  
§ 157(d) AND FED. R. BANKR. P. 5011**

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Jeoffrey L. Burtch, Chapter 7 Trustee (the "Trustee" and/or "Plaintiff") for the estate of Factory 2-U Stores, Inc. (the "Debtor" and/or "Factory 2-U") and Plaintiff in the above-captioned adversary proceedings, by his undersigned attorneys, hereby files this Response to Defendant GMAC Commercial Finance LLC's Motion for Withdrawal of the Reference Under 28 U.S.C. § 157(d) and Fed. R. Bankr. P. 5011 (the "Motion to Withdraw Reference").

### **NATURE AND STAGE OF THE PROCEEDINGS**

On January 13, 2004 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, *11 U.S.C. §§ 101 et seq.*, as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). This case converted to a case under Chapter 7 on January 27, 2005. [Main Case Docket 1757 (Order)]. Thereafter, Jeoffrey L. Burtch was appointed as interim trustee on January 27, 2005 pursuant to Section 701, and is serving as the Trustee of this Estate pursuant to Section 702(d) of the Bankruptcy Code. [Main Case Docket 1759].

Beginning in October 2005, over 800 preference proceedings were filed by the Trustee. Approximately 140 of the still pending proceedings involve a "factor" named as at least one of the Defendants (the "Factor Preference Actions"). In seventeen (17) of the Factor Preference Actions, GMAC Commercial Finance LLC ("GMAC CF") is named as a co-defendant (the "GMAC Actions"). The first complaint naming GMAC CF as a defendant was filed almost two years ago on or about October 16, 2005. In its Answers to the Trustee's Complaints filed in the GMAC Actions, GMAC CF admitted that each of these matters was a "core-proceeding." (See, e.g., Answer filed in Adv. No. 05-53237, ¶ 3, attached hereto as Exhibit A.)

GMAC CF raised as an affirmative defense in each of its Answers that the preference period transfers occurred in the ordinary course of business of the parties and as such the transfers are not avoidable pursuant to Section 547(c)(2) of the Bankruptcy Code. Contrary to the statement contained in the Memorandum in Support of GMAC CF's Motion to Withdraw Reference (the "Memorandum"), the GMAC Actions have never been consolidated for discovery, administrative or any other purpose.

Issues arose in the spring of 2007 with respect to GMAC CF's discovery responses, culminating in a Motion to Compel the Production of Documents from Defendants GMAC Commercial Credit and GMAC Commercial Finance, LLC (the "Motion to Compel") filed on or about July 26, 2007 in each of the GMAC Actions. The Motion to Compel, originally noticed for hearing on August 14, 2007, at the time of the filing of this Response is in the process of being rescheduled. Separate mediations have occurred in thirteen (13) of the GMAC Actions, and all of the GMAC Actions are currently scheduled for trial on November 18, 2007.

As is often the case, the Trustee plans to introduce payment pressure as part of its rebuttal to GMAC CF's alleged ordinary course of business defense. GMAC CF produced documents in response to the Trustee's discovery requests for all seventeen (17) GMAC Actions on January 19, 2007 (1100 pages) and on June 27, 2007 (450 pages). Certain of the materials in the June 27, 2007 production evidence communications with the Debtor regarding payments. Discovery on that topic is in part the subject of the pending Motion to Compel. It was also the subject of the Trustee's Motion Pursuant to 11 U.S.C. § 105(d) for a Status Conference in Connection with Certain Pending Adversary Proceedings (the "Motion for Conference") filed on August 15, 2007. (A copy of the Motion for Conference is attached hereto as Exhibit B.) As explained in the

Motion for Conference, the Trustee is also focusing on group activities by the Factors that collectively exerted pressure on the Debtor in terms of the preference period payments. Id. at ¶ 5.

On August 16, 2007, GMAC CF filed its Motion to Withdraw Reference and a Motion for Determination That Claims are Non-Core (the "Motion for Determination"). In its latter filing, GMAC CF requested that the Bankruptcy Court rule that the GMAC Actions are no longer core proceedings due to the Trustee's payment pressure rebuttal argument raised in response to GMAC CF's ordinary course of business affirmative defense. A copy of Plaintiff's response to the Motion for Determination ("Determination Response") is attached hereto as Exhibit C and is incorporated herein by reference.

#### ARGUMENT

GMAC CF argues that withdrawal is mandatory here because the "Trustee intends to present and litigate an antitrust case in each of the" GMAC Actions. (Memorandum, at p. 5). This argument fails as it is based on an incorrect assumption. As is discussed in the Trustee's Determination Response, GMAC CF apparently believes the Trustee will expend time, effort and funds to prove violations of the Sherman and Clayton Acts merely as a means by which to rebut an ordinary course of business defense in a preference action. GMAC CF creates this fiction as a means by which to avoid the bankruptcy court's jurisdiction and to put off a final determination in the GMAC Actions. The reality is that no new claims have been filed. There are no pleadings in the GMAC Actions by the Trustee alleging and seeking damages for antitrust claims.

Rather, the Trustee is contesting GMAC CF's ability to prove its ordinary course of business affirmative defense by a preponderance of the evidence. That affirmative defense has always been part of the GMAC Actions. Based on discovery, the Trustee



asserts that payment pressure was imposed on the Debtor by vendors, by Factors, and by several Factors acting together. The actions may be anti-competitive, and they may be collusive. Regardless, the intent is to rebut GMAC CF's ordinary course of business affirmative defense. There is no conflict between antitrust laws and the Bankruptcy Code that the Bankruptcy Court is being called upon to adjudicate, and withdrawal is not mandatory nor necessary here.

**A. Withdrawal of the Reference in the GMAC Actions is Not Mandatory**

The district court has original, but not exclusive, jurisdiction over all bankruptcy proceedings. 28 U.S.C. § 1334(b). The bankruptcy court exercises such jurisdiction under a standing order of reference, as provided by 28 U.S.C. § 157(a). Once a title 11 proceeding has been referred to the bankruptcy court, the district court's authority to withdraw the reference is governed by 28 U.S.C. § 157, which provides for both mandatory and permissive withdrawal.

GMAC CF argues that the withdrawal of the reference is mandatory in this case because "...the Trustee seeks to present a rebuttal case in the Adversary Proceedings alleging antitrust violations." Memorandum, at p. 5. GMAC CF further argues that "...it has become clear" that the Trustee intends to "...present and litigate..." an antitrust case in each of the Adversary Proceedings. *Id.* As a result of this erroneous assumption, GMAC CF claims that the GMAC Actions implicate both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce and therefore mandatory withdrawal is required under 28 U.S.C. § 157(d). GMAC CF misrepresents both the position of the Trustee in the GMAC Actions and the relevant case law on mandatory withdrawal in order to arrive at these erroneous assumptions and conclusions.

First, the Trustee does not "intend to present and litigate" an antitrust case in any current Factor Preference Action before the Bankruptcy Court. The Trustee has not and is not requesting to amend any of its complaints to include claims under the Sherman Act or Clayton Act. The Trustee filed his Motion for Conference merely to advise the Court of the status of the Factor Preference Actions and the possible need for judicial intervention at some point regarding discovery and scheduling issues. A clear reading of that Motion, attached hereto as Exhibit B, shows that it does not set forth antitrust claims to be pursued in the Factor Preference Actions.

Second, as GMAC CF is well aware, the evidence the Trustee intends to rely upon, showing payment pressure tactics utilized by various preference defendants as the Debtor slid into bankruptcy, is the type of information asserted in the normal course in preference actions. Numerous courts, including the Third Circuit, have ruled that unusual creditor pressure can defeat the ordinary course of business defense. *See, e.g., Fiber Lite Corp. v. Molded Acoustical Prods. (In re Molded Acoustical Prods.)*, 18 F.3d 217, 228 (3d Cir. 1994), citing, *Extra, Inc. v. Seawinds Ltd. (In re Seawinds Ltd.)*, 888 F.2d 640, 641 (9<sup>th</sup> Circuit 1989); *Marathon Oil Co. v. Flatau (In re Craig Oil Co.)*, 785 F.2d 1563 (11<sup>th</sup> Cir. 1986) (unusual creditor pressure was not in the ordinary course of business); *Florida Steel Corp. v. Stober (In re Industrial Supply Corporation)*, 127 B.R. 62 (M.D. Fla. 1991)(unusual creditor pressure alone could negate an ordinary course defense). Thus, Article III Courts have already held that payment pressure is a "judicially-created" exception to the ordinary course of business defense. In addition, the Trustee is not asking any court to determine that antitrust law violations are per se exceptions to preference affirmative defenses.

Third, the case law relied upon by GMAC CF for the alleged proposition that the existence of an antitrust claim requires mandatory withdrawal does not in fact stand for that principle. GMAC CF relies upon *In the Matter of Vicars Ins. Agency, Inc.*, 96 F.3d 949 (7<sup>th</sup> Cir. 1996), an opinion in fact that supports the Trustee's position that withdrawal need not occur here. Of note, the underlying cause of action in *Vicars* concerned RICO violation claims. The Bankruptcy Court was called upon to determine aiding and abetting RICO liability claims, and even in that situation both the District and Circuit Courts found that neither mandatory nor permissive withdrawal was warranted.

The Seventh Circuit noted the mandatory withdrawal provision is to be read narrowly to prevent delaying tactics, the draining of the debtor's resources, forum shopping and unnecessary litigation. *Id.* at 952. The Trustee submits these motives may be ascribed to GMAC CF. The burden is on the movant GMAC CF to show that substantial and material consideration of non-bankruptcy law is required. *Id.* at 953. Even if the non-Title 11 issue is outcome determinative, withdrawal is not required. *Id.*<sup>1</sup> GMAC CF has not and cannot meet these standards.

The *Vicars* Court also looked at the question in terms of determining significant open and unresolved issues regarding non-Title 11 law. *Id.* at 954. GMAC CF characterizes the question here as whether an antitrust violation is an "exception to Section 547". (Memorandum, at p. 5). While the Trustee does not agree with this description, even if true it does not require withdrawal as GMAC CF has defined the

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<sup>1</sup> All these principles have also been adopted by this Court. *See, e.g., Pension Benefit Guaranty Corp. v. Smith Corona Corp.*, 205 B.R. 712 (D. Del. 1996) (ERISA violation claims did not necessitate mandatory or permissive withdrawal); *In re: Columbia Gas System, Inc.*, 134 B.R. 808 (D. Del. 1991) (allegations regarding the federal Natural Gas Act, Natural Gas Policy Act and the Decontrol Act did not necessitate mandatory or permissive withdrawal).

novel issue as one requiring determination of Title 11 issues, an area particularly well suited to the Bankruptcy Court's expertise.

**B. GMAC CF has Failed to Show Cause to Withdraw the Reference**

GMAC CF's second attempt at avoiding Bankruptcy Court jurisdiction is a threat that if it loses the GMAC Actions, it will appeal the decisions all the way to the Third Circuit Court of Appeals. GMAC CF claims that cause exists to withdraw the reference under the permissive provision of Section 157(d). The "cause" here being that if the Court finds in favor of the Trustee, GMAC CF will appeal and if the reference is withdrawn before it loses, there will be one less level of review before reaching the Third Circuit, i.e., removing the bankruptcy court from the picture will "promote the administration of these proceedings..." (Memorandum, at p. 6.)

Withdrawal from the bankruptcy court is permissive under Section 157(d) "for cause shown." 28 U.S.C. § 157(d). As the movant, GMAC CF bears the burden to show such cause exists. *In re Pruitt*, 910 F.2d 1160, 1168 (3d Cir. Pa. 1990); *In re Am. Capital Equip., LLC*, 325 B.R. 372, 375 (W.D. Pa. 2005); *In re NDEP Corp.*, 203 B.R. 905, 907 (D. Del. 1996). Although the phrase "for cause shown" is not defined in the statute, the Court of Appeals for the Third Circuit has set forth five factors that a district court should consider in determining whether "cause" exists for permissive withdrawal. These factors include: (1) promoting uniformity of bankruptcy administration; (2) reducing forum shopping and confusion; (3) fostering economical use of debtor/creditor resources; (4) expediting the bankruptcy process; and (5) the timing of the request for withdrawal. *In re Pruitt*, 910 F.2d at 1168.

In addition, district courts also consider whether the parties have requested a jury trial in determining whether "cause" exists for permissive withdrawal. Assertion of a

right to a jury trial, however, even when coupled with a refusal to consent to such trial before the bankruptcy court, is not of itself sufficient cause to justify discretionary withdrawal. *In re Northwestern Institute of Psychiatry, Inc.*, 268 B.R. 79, 84 (Bankr. E.D. Pa. 2001); *see also RFE Industries, Inc. v. Anton Noll, Inc.*, No. 99-334, 2002 U.S. Dist. Lexis 26414, \*10-12 (D.N.J. April 23, 2002). Finally, whether the action sought to be withdrawn is a core or non-core proceeding is relevant in determining whether "cause" exists for permissive withdrawal. *See In re NDEP*, 203 B.R. at 908. The fact that a matter is non-core, however, does not require withdrawal of the reference. *See infra* pp. 9-10.

GMAC CF has completely failed to establish any of the permissive standards for withdrawal of the reference. *In re Pruitt*, 910 F.2d at 1168 (stating that 28 U.S.C. § 157(d) "requires in clear terms that cause be shown before the reference can be withdrawn"). In fact, despite GMAC CF's assertions to the contrary, the permissive withdrawal factors outlined by the Third Circuit weigh strongly in favor of retaining the case under the Bankruptcy Court's jurisdiction. *See, e.g., In re Allegheny Health Education and Research Foundation*, No. 06-1469, 2006 U.S. Dist. Lexis 91548 (W.D. Pa. Dec. 16, 2006) (permissive withdrawal denied where movant failed to show cause); *In re GGC, LLC*, 2006 U.S. Dist. Lexis 69163, \*4-5 (same); *In re American Capital Equipment*, 325 B.R. at 378-380 (same); *In re Philadelphia Training Center Corporation*, 155 B.R. 109, 112 (E.D. Pa. 1993) (same); *Hatzel & Buehler, Inc.*, 106 B.R. 367, 370-71 (D. Del. 1989) (same); *Valley Forge Plaza Associates v. Fireman's Fund Insurance Companies*, 107 B.R. 514, 518 (E.D. Pa. 1989) (same).

Leaving the GMAC Actions with the Bankruptcy Court promotes uniformity in bankruptcy administration. *See, e.g., In re GGC, LLC*, 2006 U.S. Dist. Lexis 69163, at

\*4-5 (withdrawal of reference denied where uniformity of bankruptcy administration furthered by remaining in bankruptcy court, even though a non-core proceeding); *In re American Capital Equipment*, 325 B.R. at 378. The Bankruptcy Court is extremely familiar with the Factor Preference Actions and the discovery that has taken place to date. The Bankruptcy Court has overseen discovery and has held all the pre-trial conferences since the initial filing of the GMAC Actions in October 2005.

Consequently, the Bankruptcy Court has intimate knowledge of the relevant parties to the GMAC Actions, the basis for the Trustee's preference claims, and the outstanding discovery issues. Allowing the Bankruptcy Court to determine the validity of GMAC CF and other Factor Defendants' defenses will promote administrative and substantive uniformity. *See In re GGC, LLC*, 2006 U.S. Dist. Lexis 69163, at \*4-5 (finding that retaining the reference in the Bankruptcy Court promoted the uniformity of bankruptcy administration where the underlying bankruptcy, which included 646 docket entries, had been with the Bankruptcy Court for 19 months); *In re American Capital Equipment*, 325 B.R. at 378 (finding that retaining the reference in the Bankruptcy Court promoted the uniformity of bankruptcy administration where the Bankruptcy Court was "already familiar with [the debtor's] negotiation of the proposed plan, and the terms thereof, which facts [we]re the basis of [the] adversary complaint").

In addition, retention of the reference by the Bankruptcy Court will avoid forum shopping and confusion. *In re Pruitt*, 910 F.2d at 1168. One may presume that GMAC CF hopes to evade the long history of these matters in the Bankruptcy Court by securing jurisdiction in the District Court and attempting to delay matters by injecting a "red herring" of supposed antitrust issues into the case. That, however, is not a valid reason

for the Court to withdraw the reference of a proceeding properly pending before the Bankruptcy Court. *See In re American Capital Equipment*, 325 B.R. at 379.

Further, as previously stated, the Bankruptcy Court is familiar with the parties and the “factor” issues. The Trustee has other non-factor and Factor preference cases pending before the Bankruptcy Court; thus, retaining the reference in the Bankruptcy Court eliminates any possibility of confusion with regard to the relevant issues in the GMAC Actions.

Despite GMAC CF’s convoluted contention otherwise, retention of the GMAC Actions by the Bankruptcy Court will foster economical use of the Debtors’ and creditors’ resources. Specifically, it will keep the parties in one court and before one judge. *See In re GGC, LLC*, 2006 U.S. Dist. Lexis 69163, at \*4-5 (finding that allowing the Bankruptcy Court to retain the reference “is plainly in the interest of the debtor and . . . Defendants since it will be proceeding before the same judge that is handling the underlying bankruptcy case, up until trial.) Judicial resources will not be wasted, as the Bankruptcy Court is uniquely qualified, through its unmatched familiarity with the issues underlying the GMAC Actions, to manage the matters on an expeditious and economical manner. In addition, retaining the reference in the Bankruptcy Court will not require a duplication of effort by the District Court.

Thus, in a core proceeding, which GMAC CF long ago conceded was the case, the Bankruptcy Court should resolve the GMAC Actions. Assuming *arguendo* if the Bankruptcy Court finds the actions are non-core proceedings, the Bankruptcy Court, in exercising its “related to” jurisdiction, will submit proposed findings of fact and conclusions of law to the District Court, which will be considered in entering any final

order or judgment. 28 U.S.C. § 157(c); *In re American Capital Equipment*, 325 B.R. at 379 n.1.

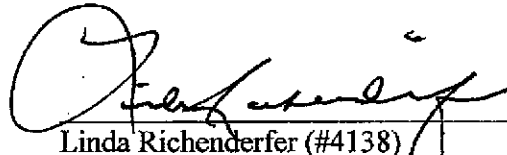
If the Court follows GMAC CF's line of reasoning, all contested matters would need to be withdrawn to the District Court because there is a chance of appeal. This is clearly not the standard for permissive withdrawal.

**CONCLUSION**

WHEREFORE, the Trustee respectfully requests that the Court enter an Order denying Defendant GMAC Commercial Finance LLC's Motion for Withdrawal of the Reference Under 28 U.S.C. § 157(d) and Fed. R. Bankr. R. 5011, and granting such other and further relief as is just and proper.

Dated: September 7, 2007  
Wilmington, Delaware

BIFFERATO GENTILOTTI LLC



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Trustee*



# EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

FACTORY 2-U STORES, INC., a/k/a  
FACTORY 2-U, f/a/k/a GENERAL TEXTILES,  
INC., f/a/k/a GENERAL TEXTILES, f/a/k/a  
FAMILY BARGAIN CORPORATION, f/a/k/a  
FAMILY BARGAIN CENTER,

Debtor.

JEFFREY L. BURTCHE,  
CHAPTER 7 TRUSTEE,

Plaintiff,

v.

ISAAC MORRIS, LTD., AND  
GMAC COMMERCIAL FINANCE, LLC,

Defendants.

Chapter 7

Case No. 04-10111 (PJW)

Adv. Pro. No. 05-53237 (KJC)

**ANSWER AND CROSSCLAIM OF GMAC COMMERCIAL FINANCE LLC, F/K/A  
GMAC COMMERCIAL CREDIT, INCORRECTLY IDENTIFIED AS GMAC  
COMMERCIAL FINANCE, LLC**

Defendant GMAC Commercial Finance LLC f/k/a GMAC Commercial Credit, incorrectly identified as GMAC Commercial Finance, LLC ("GMAC CF" or "Defendant"), by and through its undersigned counsel, hereby answers the Amended Complaint to Avoid Transfers Pursuant to 11 U.S.C. § 547 and to Recover Property Transferred Pursuant to 11 U.S.C. § 550 (the "Complaint") of plaintiff Jeffrey L. Burtch, Chapter 7 Trustee (the "Plaintiff") for the estate of Factory 2-U Stores, Inc. *et al.* (collectively, "Debtor"), as follows:

**NATURE OF CASE**

1. Paragraph 1 sets forth a series of legal conclusions to which no response is required. To the extent a response is required, the averment is denied.

**JURISDICTION**

2. Paragraph 2 sets forth a legal conclusion to which no response is required. To the extent a response is required, the averment is denied.

3. Defendant admits that the Plaintiff has sought relief pursuant to the statutes set forth in Paragraph 3, but denies that Plaintiff is entitled to the relief sought. Defendant admits that this is a "core" proceeding.

4. Paragraph 4 sets forth a legal conclusion to which no response is required. To the extent a response is required, the averment is denied.

**BACKGROUND**

5. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 5 of the Complaint.

6. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 6 of the Complaint.

7. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 7 of the Complaint.

8. Admit.

**CLAIMS FOR RELIEF**

**COUNT I**

**(Avoidance of Preference Transfers – 11 U.S.C. § 547)**

9. The Defendant incorporates the foregoing paragraphs as if each such paragraph was set forth in its entirety herein.

10. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 10 of the Complaint.

11. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 11 of the Complaint.

12. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 12 of the Complaint or the attached Exhibit A.

13. The allegations of this paragraph purport to set forth a reservation of rights, to which no response is required. Defendant further avers that Plaintiff may not reserve rights which have been barred by, among other things, the applicable statute of limitations.

14. The first sentence to Paragraph 14 of the Complaint is directed to co-defendant Isaac Morris, Ltd. ("Isaac"), to which no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to admit or deny the averments of the first sentence to Paragraph 14 of the Complaint. By way of further response, Defendant is without knowledge or information sufficient to admit or deny the averments of the second sentence to Paragraph 14 of the Complaint.

15. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 15 of the Complaint.

16. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 16 of the Complaint.

17. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 17 of the Complaint.

18. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 18 of the Complaint.

19. Paragraph 19 sets forth a legal conclusion to which no response is required.  
To the extent a response is required, the averment is denied.

**COUNT II**

**(Recovery of Avoided Transfers – 11 U.S.C. § 550)**

20. The Defendant incorporates the foregoing paragraphs as if each such paragraph was set forth in its entirety herein.

21. Paragraph 21 sets forth a legal conclusion to which no response is required.  
To the extent a response is required, the averment is denied.

22. Paragraph 22 sets forth a legal conclusion to which no response is required.  
To the extent a response is required, the averment is denied.

**COUNT III**

**(Disallowance of all Claims – 11 U.S.C. § 502 (d) and (j))**

23. The Defendant incorporates the foregoing paragraphs as if each such paragraph was set forth in its entirety herein.

24. Paragraph 24 sets forth a legal conclusion to which no response is required.  
To the extent a response is required, the averment is denied.

25. Paragraph 25 sets forth a legal conclusion to which no response is required.  
To the extent a response is required, admitted only that no portion of the alleged Transfers have been returned to the Plaintiff by Defendant. By way of further response, Defendant is without knowledge or information sufficient to admit or deny whether Isaac has returned any portion of the alleged Transfers.

26. Paragraph 26 sets forth a legal conclusion to which no response is required.  
To the extent a response is required, the averment is denied.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint should be dismissed for failure to state a claim against Defendant upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's claim is subject to the ordinary course of business defense set forth by 11 U.S.C. § 547 (c)(2).

**THIRD AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's claim is subject to the new value defense set forth by 11 U.S.C. § 547 (c)(4).

**FOURTH AFFIRMATIVE DEFENSE**

To the extent that Defendant received some or all of the alleged Transfers, such transfers are not recoverable from Defendant because Defendant was only a mere conduit, as Defendant did not have dominion and control over the transfers.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred to the extent they relate to any transaction that was a "client risk receivable", to wit, any transaction which Defendant did not provide credit approval under the certain factoring agreement between Defendant and Isaac.

**SIXTH AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiff has failed to meet its burden to establish a preferential transfer pursuant to 11 U.S.C. § 547(g).

**SEVENTH AFFIRMATIVE DEFENSE**

Upon information and belief, Plaintiff has failed to meet its burden to establish that it is entitled to recovery of property pursuant to 11 U.S.C. § 550.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff may not recover any monies allegedly due under the Complaint, that are barred after application of the doctrines of setoff and/or recoupment.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff may not avoid any transfers or payments that the Plaintiff made to Defendant, that are barred by 11 U.S.C. § 546 and the limitations on avoiding powers thereunder.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the equitable doctrines of waiver, laches and/or release as provided in Federal Rule of Bankruptcy Procedure 7008(c).

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part by all applicable statutes of limitations.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred to the extent the Bankruptcy Court authorized the Debtors to make postpetition payments on account of prepetition debts owed to the Defendant.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to pre- and/or post-judgment interests or costs of this action.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred to the extent Defendant received from the Debtors the same amount it would have received if the Debtors' cases were cases under chapter 7 of the Bankruptcy Code, the transfers had not been made, and the Defendant received a distribution from the Debtors under the provisions of the Bankruptcy Code.

**RESERVATION OF RIGHTS**

Defendant reserves the right to assert additional defenses based upon further investigation and discovery.

WHEREFORE, the Defendant prays that the Complaint be dismissed with an award of its costs, fees and expenses and such further relief as the Court shall deem just and proper.

**CROSSCLAIM AGAINST ISAAC MORRIS, LTD.**

**COUNT I - INDEMNIFICATION AND CONTRIBUTION**

27. GMAC CF incorporates the foregoing paragraphs as if each such paragraph was set forth in its entirety herein.

28. GMAC CF and Isaac are parties to a factoring agreement (the "Factoring Agreement") under which GMAC CF was to collect and distribute certain of Isaac's accounts receivables from Debtors.

29. Pursuant to the Factoring Agreement, all orders for sales to Debtors were to be submitted to GMAC CF for credit approval prior to shipment. All credit approvals were required to be in writing.

30. Any receivables arising from orders that GMAC CF did not approve were with full recourse to Isaac to the extent not so approved (the "Client Risk Account Receivable").

31. GMAC CF did not approve any receivables during the Preference Period, i.e., GMAC CF did not approve any of Isaac's orders for sales to Debtors in the 90 days prior to the Petition Date, and specifically did not approve any orders identified in Exhibit "A" to the Plaintiff's Complaint.



32. All Transfers identified in Exhibit A to the Complaint are Client Risk Account Receivables.

33. Accordingly, GMAC CF has recourse against Isaac.

34. The Factoring Agreement further provides that Isaac shall indemnify and contribute to GMAC CF for all losses, costs and expenses incurred in connection with Client Risk Account Receivables.

35. Plaintiff has filed the Complaint seeking recovery of the Transfers.

36. Because all transfers identified in the Plaintiff's Complaint are Client Risk Account Receivables, Isaac is obligated to indemnify and contribute to GMAC CF for all losses, costs and expenses in this matter.

WHEREFORE, Defendant demands Isaac indemnify and contribute to GMAC CF for any and all claims brought by the Plaintiff, the Estate or Debtors in connection with the Complaint, including but not limited to any judgments, damages, liabilities and expenses (including without limitation attorneys' fees and costs).

Dated: September 19, 2006

EDWARDS ANGELL PALMER & DODGE LLP

/s/ Mark D. Olivere

Denise Seastone Kraft (#2778)

Mark D. Olivere (#4291)

919 N. Market Street, Suite 1500

Wilmington, DE 19801

Tel: (302) 777-7770

Fax: (302) 777-7263

dkraft@eapdlaw.com

molivere@eapdlaw.com

*Counsel to GMAC Commercial Finance LLC*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

FACTORY 2-U STORES, INC., a/k/a  
FACTORY 2-U, f/a/k/a GENERAL TEXTILES,  
INC., f/a/k/a GENERAL TEXTILES, f/a/k/a  
FAMILY BARGAIN CORPORATION, f/a/k/a  
FAMILY BARGAIN CENTER,

Debtor.

JEFFREY L. BURTCH,  
CHAPTER 7 TRUSTEE,

Plaintiff,

v.

ISAAC MORRIS, LTD., AND  
GMAC COMMERCIAL FINANCE, LLC,

Defendants.

Chapter 7

Case No. 04-10111 (PJW)

Adv. Pro. No. 05-53237 (KJC)

CERTIFICATE OF SERVICE

I, Mark D. Olivere, hereby certify that on September 19, 2006, I caused a copy of the foregoing ANSWER AND CROSSCLAIM OF GMAC COMMERCIAL FINANCE LLC, F/K/A GMAC COMMERCIAL CREDIT, INCORRECTLY IDENTIFIED AS GMAC COMMERCIAL FINANCE, LLC to be served upon the following counsel in the manner indicated:

**VIA HAND DELIVERY**

Shelley A. Kinsella, Esq. (#4023)  
Cooch & Taylor  
824 N. Market Street  
Suite 1000  
Wilmington, DE 19899-1680

**VIA REGULAR MAIL**

Frederick B. Rosner, Esq.  
Duane Morris LLP  
1200 North Market Street 12th Floor  
Wilmington, DE 19801

**VIA REGULAR MAIL**

Son K. Le, Esq.  
Platzer Swergold Karlin Levine Goldberg &  
Jaslow, LLP  
1065 Avenue of the Americas 18th Floor  
New York, New York 10018

/s/ Mark D. Olivera

Mark D. Olivera (#4291)

# EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

FACTORY 2-U STORES, INC., a/k/a  
FACTORY 2-U, f/a/k/a GENERAL  
TEXTILES, INC., f/a/k/a GENERAL  
TEXTILES, f/a/k/a FAMILY BARGAIN  
CORPORATION, f/a/k/a FAMILY  
BARGAIN CENTER,

Debtor.

JEFFREY L. BURTCH,  
CHAPTER 7 TRUSTEE,

Plaintiff,

v.

LEEMO USA INC./  
HSBC BUSINESS CREDIT (USA) INC.,

LOTUS APPAREL INC./  
FINANCE ONE INC.,

MYSTIQUE APPAREL GROUP INC./  
CIT GROUP INC.,

PORTICO APPAREL LP/  
CIT GROUP, INC.,

S.A.S.C.O. TRADING INC./  
HSBC BUSINESS CREDIT (USA) INC.,

SNOOP DOGG CLOTHING, AKNY INC./  
CIT GROUP, INC.,

WOODS & GRAY LTD./  
CIT GROUP, INC.,

KS TRADING CORP./  
CIT GROUP, INC.,

Chapter 7

Case No. 04-10111 (PJW)

Adv. Proc. Nos.

05-30002 (KJC)

05-30057 (KJC)

05-30065 (KJC)

05-30086 (KJC)

05-30091 (KJC)

05-30098 (KJC)

05-30133 (KJC)

05-30192 (KJC)

DKT. NO. Various  
DT. FILED 8/15/07

JOHN PAUL RICHARD/ CIT GROUP, INC.,	)	05-30197 (KJC)
	)	
NEW TECHNICAL GROUP, INC./ CIT GROUP, INC.,	)	05-30246 (KJC)
	)	
SECOND GENERATION INC./ CONTINENTAL BUSINESS CREDIT, INC.,	)	05-30471 (KJC)
	)	
DECOLINE INTERNATIONAL, INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-30474 (KJC)
	)	
MDR CLOTHING, INC., ALMOST NOTHING, INC./ CONTINENTAL BUSINESS CREDIT INC.,	)	05-30673 (KJC)
	)	
INNOVATIVE COSMETICS CONCEPTS L.L.C./ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52559 (KJC)
	)	
G III APPAREL GROUP, LTD.,	)	05-52582 (KJC)
	)	
YG DESIGNS INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-52668 (KJC)
	)	
YOU AND ME LEGWEAR LLC, SEATTLE PACIFIC INDUSTRIES, INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-52669 (KJC)
	)	
WEEPLAY KIDS L.L.C./ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52671 (KJC)
	)	
SELECT CLOTHING CO., INC./ CIT GROUP INC/ COMMERCIAL SERVICES, INC.,	)	05-52697 (KJC)
	)	
RANDAZZO ENTERPRISES, LLC d/b/a SUNSHINE HOME PRODUCTS/ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52721 (KJC)
	)	
ALWAYS HAPPY SPORTSWEAR INC./ CIT GROUP/BUSINESS CREDIT, INC.,	)	05-52773 (KJC)
	)	
GLOBAL MERCHANDISE LLC/	)	05-52993 (KJC)

GENERAL BUSINESS CREDIT,	)	
	)	
J&L FOOTWEAR INC./	)	05-53016 (KJC)
CIT GROUP, INC.,	)	
	)	
MOSHAY INC./	)	05-53032 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
FRANSHAW, INC./	)	05-53047 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
DAVID'S PLACE OFF PRICE	)	05-53060 (KJC)
CLOTHING CO., INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ROYAL ITEMS, INC./	)	05-53118 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
PARAMOUNT APPAREL, LTD. f/k/a	)	05-53120 (KJC)
USA AMICO, LTD./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
SMART INVENTIONS INC./	)	05-53123 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
SAMSUNG AMERICA INC./	)	05-53205 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
CHERRY STIX LTD., CHERRY STIX	)	06-50018 (KJC)
KIDS, LTD./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
CACTUS TRADING, INC., REVERE	)	06-50019 (KJC)
TEXTILE COMPANY, INC./	)	
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./	)	
COMMERCIAL SERVICES, INC.,	)	
	)	

CROWN CRAFTS INFANT	)	06-50020 (KJC)
PRODUCTS, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.	)	
	)	
CELEBRITY INTERNATIONAL INC./	)	06-50021 (KJC)
FIDELITY FACTORS, L.L.C./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
BILLION TOWER INTERNATIONAL LLC	)	06-50082 (KJC)
HSBC BUSINESS CREDIT (USA) INC./	)	
CIT GROUP, INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ANDREWS SPORT CLUB, INC./	)	06-50161 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BARON DISTRIBUTORS, INC./	)	06-50162 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BENTEX GROUP, INC./	)	06-50163 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BREAKER JEANSWEAR CORP. d/b/a	)	06-50165 (KJC)
JALATE LTD./	)	
CIT GROUP INC./CMS, INC.,	)	
	)	
DIVISION SIX SPORTS, INC./	)	06-50166 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
DORAN LOREN L.L.C./	)	06-50167 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
MIDTOWN CLOSEOUT, INC./	)	06-50171 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
MIRTH INC. d/b/a COUGAR	)	06-50172 (KJC)
INTERNATIONAL/	)	
CIT GROUP INC./CMS, INC.,	)	
	)	
MJT IMPORTS CORPORATION/	)	06-50173 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
PACO SPORT, LTD./	)	06-50175 (KJC)
CIT GROUP INC./COMMERCIAL	)	



SERVICES, INC.,	)	
	)	
PAN OCEANIC GROUP, INC, PANO	)	06-50176 (KJC)
OFF PRICE, LTD./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC./GE CAPITAL	)	
COMMERCIAL SERVICES, INC.,	)	
	)	
TARGET RESOURCES, INC./	)	06-50179 (KJC)
CIT GROUP/CMS, INC.,	)	
	)	
IFG CORPORATION/	)	06-50200 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
PANTIES PLUS, INC./	)	06-50207 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ALLIANCE WHOLESALE CORP./	)	06-50215 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ALONA APPAREL INC. a/k/a POSITANO/	)	06-50218 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
PUZZLES ENTERPRISES, INC./	)	06-50221 (KJC)
L.A. MAIN CONNECTION, INC.,	)	
	)	
ACCESS BASIC BLUE JEANS CORP./	)	06-50223 (KJC)
HANA FINANCIAL, INC.,	)	
	)	
AMEREX GROUP, INC. d/b/a	)	06-50228 (KJC)
AMEREX OF CALIFORNIA CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
AMERICAN BASICS CO., L.L.C. a/k/a	)	06-50229 (KJC)
ABC/CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GLENOIT UNIVERSAL, LTD.,	)	06-50231 (KJC)
GLENOIT L.L.C./	)	
CIT GROUP INC./COMMERCIAL	)	

SERVICES, INC.,	)	
	)	
GINA HOSIERY, LTD./	)	06-50232 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GARY STEINER SALES, INC./	)	06-50233 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GLOBAL GOLD, INC., GLOBAL	)	06-50237 (KJC)
APPAREL, L.L.C., PLANET GOLD	)	
CLOTHING COMPANY INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
M. HIDARY & COMPANY INC./	)	06-50238 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
H.G. HOSIERY ASSOCIATES, INC./	)	06-50240 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HAMCO, INC./	)	06-50243 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HARVIC INTERNATIONAL LTD./	)	06-50244 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HEMISPHERE WORLDWIDE SALES, INC./	)	06-50245 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
PANDELCO, INC. d/b/a L.A. MOVERS/	)	06-50251 (KJC)
CIT GROUP INC./ COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
LUGGAGE AMERICA, INC. d/b/a	)	06-50255 (KJC)
OLYMPIA INTERNATIONAL/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	

KAKTUS SPORTSWEAR, INC./	)	06-50270 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
REVERE MILLS, INC./	)	06-50272 (KJC)
CIT GROUP, INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
SARAMAX APPAREL GROUP, INC./	)	06-50274 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
TREVCO, INC.,	)	06-50277 (KJC)
	)	
USA TEASE INC., SRA APPAREL, INC.,	)	06-50292 (KJC)
SRA APPAREL CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GMA ACCESSORIES, INC. d/b/a	)	06-50296 (KJC)
CAPELLI OF NY, CAPPELLI OF	)	
NEW YORK, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
RIGO INTERNATIONAL, INC./	)	06-50297 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
SCOPE IMPORTS INC., SCOPE	)	06-50299 (KJC)
APPAREL, L.P./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
VAN DALE INDUSTRIES, INC.,	)	06-50304 (KJC)
	)	
TIP TOP PANTS, INC. a/k/a	)	06-50323 (KJC)
TIP TOP PANT INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
CHF INDUSTRIES, INC.,	)	06-50327 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
IN 7 CLOTHING, INC., IN 7	)	06-50328 (KJC)
CLOTHING CO., INC./	)	
CIT GROUP INC./COMMERCIAL	)	

SERVICES, INC.,	)	
	)	
INNOVO INC., INNOVO GROUP, INC./	)	06-50333 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
INTERTEX APPAREL LTD./	)	06-50338 (KJC)
GE CAPITAL COMMERCIAL	)	
SERVICES, INC./CIT GROUP INC./	)	
COMMERCIAL SERVICES, INC.,	)	
	)	
PERFECT FIT INDUSTRIES, INC./	)	06-50370 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
M.R.S., INC. d/b/a CARESSE	)	06-50373 (KJC)
LINGERIE, CARESSE LINGERIE, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
RAIDER JEAN, L.L.C., MARKO APPAREL	)	06-50377 (KJC)
OF NEW YORK LTD. d/b/a	)	
RAIDER JEAN COMPANY/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ALBERT ASSOR d/b/a COCONUT GROVE	)	06-50381 (KJC)
DESIGN, ADABERPI CORP. d/b/a	)	
COCONUT GROVE DESIGN/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GOLDEN TOO, INC., PLANET GOLD	)	06-50382 (KJC)
CLOTHING COMPANY, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
JUST FOR WRAPS, INC., d/b/a	)	06-50384 (KJC)
WRAPPER, JUST FOR WRAPS/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
TURN ON PRODUCTS, INC. d/b/a	)	06-50390 (KJC)
YOUNIQUE CLOTHING CO./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	

AMERICAN LIGHTING INDUSTRY INC.	)	06-50392 (KJC)
a/k/a AMERICAN LIGHTING USA/	)	
RTA FURNITURE OF AMERICA/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
TRANSCO MERCHANDISE, INC. a/k/a	)	06-50395 (KJC)
TRANSCO TRADING, TRANSCO TRADING	)	
CO., TRANSCO TRADING CORP.,	)	
TRANSCO IMPORTS CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
BMGM CO., L.L.C. d/b/a	)	06-50398 (KJC)
HONEYCOMB KIDS/	)	
GMAC COMMERCIAL FINANCE L.L.C./	)	
CIT GROUP INC./ COMMERCIAL	)	
SERVICES, INC.,	)	
STRETCH-O-RAMA, INC., d/b/a	)	06-50399 (KJC)
LONGSTREET, KIDSZONE CLOTHING CO.,	)	
NASCAR, SAHARA, GENUINE SCHOOL	)	
UNIFORM, MIDTOWN CLOSEOUTS,	)	
PRIMARY/CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
LILY BLEU, INC. D/B/A LILY BLEU,	)	06-50400 (KJC)
KIM & CAMI PRODUCTIONS INC./	)	
SUNTRUST BANKS, INC.,	)	
AMERICAN CHARACTER CLASSICS INC.,	)	06-50430 (KJC)
MAMIYE BROTHERS INC.	)	
a/k/a MAMIYE SALES/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
GOLD MEDAL HOSIERY CO.,	)	06-50431 (KJC)
PREGER AND WERTENTEIL INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
SOLED OUT SOCKS INC. /	)	05-30100 (KJC)
GMAC COMMERCIAL CREDIT,	)	
FAST FORWARD, LLC /	)	05-30156 (KJC)

GMAC COMMERCIAL FINANCE,	)	
SILVER GOOSE, INC. /	)	05-30463 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
STAR REGENT APPAREL, INC.,	)	05-30476 (KJC)
STAR REGENT INTERNATIONAL INC./	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
ATLANTIC HOSIERY, INC. /	)	05-30477 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
PARK B. SMITH INC. D/B/A SMITH AND	)	05-30479 (KJC)
JOHNSON AND D/B/A PARK B. SMITH LTD.,	)	
PARK B. SMITH SR. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
ISAAC MORRIS, LTD.	)	05-53237 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
ISAAC MORRIS, LTD. D/B/A E BABY,	)	06-50004 (KJC)
E-BABY L.L.C. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
ALL-WAYS SPORTSWEAR, LTD. /	)	06-50035 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
GREAT WALL CORP. /	)	06-50041 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
OUTERSTUFF, LTD. /	)	06-50132 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
AMERICAN MARKETING ENTERPRISES,	)	06-50220 (KJC)
INC. / GMAC COMMERCIAL FINANCE L.L.C.,	)	
HAYWIN TEXTILE PRODUCTS, INC. /	)	06-50246 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
RK INDUSTRIES INC. /	)	06-50298 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
WIESNER PRODUCTS, INC. /	)	06-50365 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
ACCESSORY NETWORK GROUP, LLC A/K/A	)	06-50378 (KJC)

ACCESSORY NETWORK GROUP /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
AMICA APPAREL CORP. D/B/A	)	06-50379 (KJC)
SQUEEZE KIDS /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
STYLE N DESIGN, INC. and	)	05-30464 (KJC)
STERLING FACTORS CORPORATION,	)	
	)	
PACIFIC TEAZE and	)	06-50135 (KJC)
STERLING FACTORS CORPORATION,	)	
	)	
CELEBRATION TRADING, INC.	)	05-30746 (KJC)
CELEBRATION II, INC., d/b/a	)	
CELEBRATION TRADING, INC.	)	
SALES EXCHANGE, INC. d/b/a	)	
CELEBRATION TRADING, INC.	)	
and STERLING FACTORS CORPORATION,	)	
	)	
TKO ORIGINALS LTD A/K/A	)	06-50367 (KJC)
TKO ORIGINALS LTD	)	
and LES ORIGINAUX TKO LTD	)	
and STERLING FACTORS CORPORATION,	)	
	)	
NATCO PRODUCTS CORPORATION AND	)	06-50085 (KJC)
MILBERG FACTORS INC.,	)	
	)	
M ARON CORPORATION AND	)	05-30067 (KJC)
MILBERG FACTORS INC.,	)	
	)	
A.L.T. SPORTSWEAR, INC. AND	)	05-30669 (KJC)
MILBERG FACTORS INC.,	)	
	)	
KIDS HEADQUARTERS INC. A/K/A	)	06-50429 (KJC)
KIDS HEADQUARTERS,	)	
WEAR ME APPAREL CORP., AND	)	
MILBERG FACTORS INC.,	)	
	)	
LOUISE PARIS, LTD. AND	)	06-50366 (KJC)
MILBERG FACTORS INC.,	)	
	)	
SML SPORT LTD. AND	)	05-52694 (KJC)
MILBERG FACTORS INC.,	)	
	)	
MADISON INDUSTRIES, INC. AND	)	06-50342 (KJC)

MILBERG FACTORS INC.,	)	
	)	
GARLAND SALES, INC. AND	)	06-50040 (KJC)
MILBERG FACTORS INC.,	)	
	)	
JDR APPAREL GROUP, L.L.C. and	)	05-30750 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
JERRY LEIGH OF CALIFORNIA INC.	)	05-30752 (KJC)
JERRY LEIGH ENTERTAINMENT	)	
APPAREL INC. and HSBC BUSINESS CREDIT	)	
(USA) INC.,	)	
	)	
ALMAR SALES COMPANY INC. D/B/A	)	06-50033 (KJC)
ASC PROMOTIONS and HSBC BUSINESS	)	
CREDIT (USA) INC.,	)	
	)	
AMERISPORT, L.L.C. and HSBC BUSINESS	)	06-50034 (KJC)
CREDIT (USA) INC.,	)	
	)	
THE NORTHWEST COMPANY INC. D/B/A	)	06-50174 (KJC)
WILMINGTON PRODUCTS USA, INC.	)	
and HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
FUNNY EXPRESSIONS, INC. and	)	06-50235 (KJC)
and HSBC BUSINESS CREDIT	)	
(USA) INC.,	)	
	)	
FASHION OPTION INC. D/B/A GENERATION	)	06-50045 (KJC)
ONE APPAREL, INC. /	)	
ROSENTHAL & ROSENTHAL INC.,	)	
	)	
MICHAEL'S NEW YORK JEAN CO. INC.	)	05-30063 (KJC)
CAPITAL FACTORS,	)	
	)	
CHOICE APPAREL, INC.	)	05-30148 (KJC)
CAPITAL FACTORS,	)	
	)	
BY DESIGN, LLC	)	05-30457 (KJC)
CAPITAL FACTORS, INC.,	)	
	)	
DESIRE SPORTSWEAR, INC.	)	05-30460 (KJC)
CAPITAL FACTORS, INC.,	)	
	)	
I-FE APPAREL, INC.	)	05-53037 (KJC)
CAPITAL FACTORS, LLC,	)	



06-50049 (KJC)

06-50275 (KJC)

05-30748 (KJC)

**Defendants.**

**TRUSTEE'S MOTION PURSUANT TO 11 U.S.C. §105 (d) FOR A STATUS  
CONFERENCE IN CONNECTION WITH CERTAIN PENDING ADVERSARY  
PROCEEDINGS**

Jeoffrey L. Burtch, Chapter 7 Trustee (the "Trustee" and/or "Plaintiff") for the estate of Factory 2-U Stores, Inc. (the "Debtor" and/or "Factory 2-U"), pursuant to 11 U.S.C. § 105 (d), hereby moves this Court to conduct a general status conference regarding the above-captioned adversary proceedings in order to address recent developments affecting these matters and their respective pretrial schedules. Trustee's Counsel has been advised that if the Court is amenable to conducting a 105 (d) status conference, it may occur on August 23, 2007 at 3:30 p.m. The purpose of this Motion, for which the Trustee seeks expedited consideration, is to request the conference and to advise the Court and Defendants of the subjects that the Trustee respectfully requests be addressed. In support thereof, the Trustee states as follows:

1. On January 13, 2004 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

2. This case converted to an action under Chapter 7 on January 27, 2005.

Jeoffrey L. Burtch was appointed as Interim Trustee on January 27, 2005 pursuant to Section 701 of the Bankruptcy Code and is serving as the Trustee of this Estate pursuant to Section 702(d) of the same.

3. Beginning in October 2005, over 800 preference proceedings were filed by the Trustee. Plaintiff requests a status conference for approximately 140 of the still pending actions, all of which involve a "factor" named as at least one of the Defendants (the "Factor Preference Actions").

4. Information has developed that affects the pretrial schedules for the Factor Preference Actions. The factor defendants have consistently produced in discovery little to no communications with the Debtor or co-defendants and other factor defendants. The Trustee has found amidst the approximately 5000 boxes of information placed in storage by the Debtor approximately six boxes that contained computer back-up tapes. The box descriptions did not indicate that computer information was contained therein. The laborious, expensive process of uploading the information and reviewing it continues. The review has yielded many emails containing communications between factors and/or their vendors and Factory 2-U during the relevant time period concerning topics such as payment terms and credit lines. The Trustee respectfully submits that he has the right to obtain such relevant, important information from the factors and their vendors as part of the discovery process in these matters.

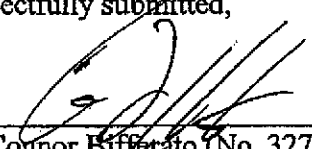
5. In addition, documents produced by one of the factors and information learned during a deposition reflect anti-competitive activities undertaken by the factors as a group such that payments during the preference period cannot be categorized as

occurring in the "ordinary course of business". The factors discussed subjects such as payment terms, credit lines, surcharges and requests for security such as letters of credit. These group activities exerted pressure on the Debtor in terms of its preference period payments. Further, this information may give rise to additional causes of action to be asserted by the Trustee on behalf of the estate against the factor defendants, such as claims based on violations of antitrust statutes.

6. It is respectfully submitted that the Factor Preference Actions have developed into matters far more complex than typical or "run of the mill" Section 547 proceeding. Information relating to the Trustee's response to the factors' ordinary course of business affirmative defense claims will also relate to potential additional antitrust causes of action to be brought by the Trustee. Accordingly, the Trustee has requested a status conference with the Court in order to provide a forum in which to address these developments and the most appropriate future proceedings in these matters.

Dated: August 15, 2007  
Wilmington, Delaware

Respectfully submitted,



---

Ian Connor Bifferato (No. 3273)  
Linda Richenderfer (No. 4138)  
Garvan F. McDaniel (No. 4167)  
BIFFERATO GENTILOTTI LLC  
800 N. King Street, Plaza Level  
Wilmington, DE 19801

-and-

/s/ Robert W. Pedigo

Robert W. Pedigo (No. 4047)

George R. Tsakataras (No. 3911)

COOCH AND TAYLOR

824 Market Street, Suite 1000

Wilmington, DE 19801

*Co-Counsel for Plaintiff Jeffrey L.*

*Burtch, Chapter 7 Trustee*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

FACTORY 2-U STORES, INC., a/k/a  
FACTORY 2-U, f/a/k/a GENERAL  
TEXTILES, INC., f/a/k/a GENERAL  
TEXTILES, f/a/k/a FAMILY BARGAIN  
CORPORATION, f/a/k/a FAMILY  
BARGAIN CENTER,

Debtor.

JEFFREY L. BURTCH,  
CHAPTER 7 TRUSTEE,

Plaintiff,

v.

LEEMO USA INC./  
HSBC BUSINESS CREDIT (USA) INC.,

LOTUS APPAREL INC./  
FINANCE ONE INC.,

MYSTIQUE APPAREL GROUP INC./  
CIT GROUP INC.,

PORTICO APPAREL LP/  
CIT GROUP, INC.,

S.A.S.C.O. TRADING INC./  
HSBC BUSINESS CREDIT (USA) INC.,

SNOOP DOGG CLOTHING, AKNY INC./  
CIT GROUP, INC.,

WOODS & GRAY LTD./  
CIT GROUP, INC.,

KS TRADING CORP./  
CIT GROUP, INC.,

Chapter 7

Case No. 04-10111 (PJW)

Adv. Proc. Nos.

05-30002 (KJC)

05-30057 (KJC)

05-30065 (KJC)

05-30086 (KJC)

05-30091 (KJC)

05-30098 (KJC)

05-30133 (KJC)

05-30192 (KJC)

JOHN PAUL RICHARD/ CIT GROUP, INC.,	)	05-30197 (KJC)
	)	
NEW TECHNICAL GROUP, INC./ CIT GROUP, INC.,	)	05-30246 (KJC)
	)	
SECOND GENERATION INC./ CONTINENTAL BUSINESS CREDIT, INC.,	)	05-30471 (KJC)
	)	
DECOLINE INTERNATIONAL, INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-30474 (KJC)
	)	
MDR CLOTHING, INC., ALMOST NOTHING, INC./ CONTINENTAL BUSINESS CREDIT INC.,	)	05-30673 (KJC)
	)	
INNOVATIVE COSMETICS CONCEPTS L.L.C./ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52559 (KJC)
	)	
G III APPAREL GROUP, LTD.,	)	05-52582 (KJC)
	)	
YG DESIGNS INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-52668 (KJC)
	)	
YOU AND ME LEGWEAR LLC, SEATTLE PACIFIC INDUSTRIES, INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-52669 (KJC)
	)	
WEEPLAY KIDS L.L.C./ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52671 (KJC)
	)	
SELECT CLOTHING CO., INC./ CIT GROUP INC/ COMMERCIAL SERVICES, INC.,	)	05-52697 (KJC)
	)	
RANDAZZO ENTERPRISES, LLC d/b/a SUNSHINE HOME PRODUCTS/ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52721 (KJC)
	)	
ALWAYS HAPPY SPORTSWEAR INC./ CIT GROUP/BUSINESS CREDIT, INC.,	)	05-52773 (KJC)
	)	
GLOBAL MERCHANDISE LLC/	)	05-52993 (KJC)

GENERAL BUSINESS CREDIT,	)	
J&L FOOTWEAR INC./	)	
CIT GROUP, INC.,	)	05-53016 (KJC)
MOSHAY INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53032 (KJC)
SERVICES, INC.,	)	
FRANSHAW, INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53047 (KJC)
SERVICES, INC.,	)	
DAVID'S PLACE OFF PRICE	)	
CLOTHING CO., INC./	)	05-53060 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
ROYAL ITEMS, INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53118 (KJC)
SERVICES, INC.,	)	
PARAMOUNT APPAREL, LTD. f/k/a	)	
USA AMICO, LTD./	)	05-53120 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
SMART INVENTIONS INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53123 (KJC)
SERVICES, INC.,	)	
SAMSUNG AMERICA INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53205 (KJC)
SERVICES, INC.,	)	
CHERRY STIX LTD., CHERRY STIX	)	
KIDS, LTD./	)	06-50018 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
CACTUS TRADING, INC., REVERE	)	
TEXTILE COMPANY, INC./	)	06-50019 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./	)	
COMMERCIAL SERVICES, INC.,	)	

CROWN CRAFTS INFANT	)	06-50020 (KJC)
PRODUCTS, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.	)	
	)	
CELEBRITY INTERNATIONAL INC./	)	06-50021 (KJC)
FIDELITY FACTORS, L.L.C./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
BILLION TOWER INTERNATIONAL LLC	)	06-50082 (KJC)
HSBC BUSINESS CREDIT (USA) INC./	)	
CIT GROUP, INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ANDREWS SPORT CLUB, INC./	)	06-50161 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BARON DISTRIBUTORS, INC./	)	06-50162 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BENTEX GROUP, INC./	)	06-50163 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BREAKER JEANSWEAR CORP. d/b/a	)	06-50165 (KJC)
JALATE LTD./	)	
CIT GROUP INC./CMS, INC.,	)	
	)	
DIVISION SIX SPORTS, INC./	)	06-50166 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
DORAN LOREN L.L.C./	)	06-50167 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
MIDTOWN CLOSEOUT, INC./	)	06-50171 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
MIRTH INC. d/b/a COUGAR	)	06-50172 (KJC)
INTERNATIONAL/	)	
CIT GROUP INC./CMS, INC.,	)	
	)	
MJT IMPORTS CORPORATION/	)	06-50173 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
PACO SPORT, LTD./	)	06-50175 (KJC)
CIT GROUP INC./COMMERCIAL	)	



SERVICES, INC.,	)	
PAN OCEANIC GROUP, INC, PANO	)	06-50176 (KJC)
OFF PRICE, LTD./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC./GE CAPITAL	)	
COMMERCIAL SERVICES, INC.,	)	
TARGET RESOURCES, INC./	)	06-50179 (KJC)
CIT GROUP/CMS, INC.,	)	
IFG CORPORATION/	)	06-50200 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
PANTIES PLUS, INC./	)	06-50207 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
ALLIANCE WHOLESALE CORP./	)	06-50215 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
ALONA APPAREL INC. a/k/a POSITANO/	)	06-50218 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
PUZZLES ENTERPRISES, INC./	)	06-50221 (KJC)
L.A. MAIN CONNECTION, INC.,	)	
ACCESS BASIC BLUE JEANS CORP./	)	06-50223 (KJC)
HANA FINANCIAL, INC.,	)	
AMEREX GROUP, INC. d/b/a	)	06-50228 (KJC)
AMEREX OF CALIFORNIA CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
AMERICAN BASICS CO., L.L.C. a/k/a	)	06-50229 (KJC)
ABC/CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
GLENOIT UNIVERSAL, LTD.,	)	06-50231 (KJC)
GLENOIT L.L.C./	)	
CIT GROUP INC./COMMERCIAL	)	

SERVICES, INC.,	)	
	)	
GINA HOSIERY, LTD./	)	06-50232 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GARY STEINER SALES, INC./	)	06-50233 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GLOBAL GOLD, INC., GLOBAL	)	06-50237 (KJC)
APPAREL, L.L.C., PLANET GOLD	)	
CLOTHING COMPANY INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
M. HIDARY & COMPANY INC./	)	06-50238 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
H.G. HOSIERY ASSOCIATES, INC./	)	06-50240 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HAMCO, INC./	)	06-50243 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HARVIC INTERNATIONAL LTD./	)	06-50244 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HEMISPHERE WORLDWIDE SALES, INC./	)	06-50245 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
PANDELCO, INC. d/b/a L.A. MOVERS/	)	06-50251 (KJC)
CIT GROUP INC./ COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
LUGGAGE AMERICA, INC. d/b/a	)	06-50255 (KJC)
OLYMPIA INTERNATIONAL/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	

KAKTUS SPORTSWEAR, INC./	)	06-50270 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
REVERE MILLS, INC./	)	06-50272 (KJC)
CIT GROUP, INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
SARAMAX APPAREL GROUP, INC./	)	06-50274 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
TREVCO, INC.,	)	06-50277 (KJC)
	)	
USA TEASE INC., SRA APPAREL, INC.,	)	06-50292 (KJC)
SRA APPAREL CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GMA ACCESSORIES, INC. d/b/a	)	06-50296 (KJC)
CAPELLI OF NY, CAPELLI OF	)	
NEW YORK, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
RIGO INTERNATIONAL, INC./	)	06-50297 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
SCOPE IMPORTS INC., SCOPE	)	06-50299 (KJC)
APPAREL, L.P./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
VAN DALE INDUSTRIES, INC.,	)	06-50304 (KJC)
	)	
TIP TOP PANTS, INC. a/k/a	)	06-50323 (KJC)
TIP TOP PANT INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
CHF INDUSTRIES, INC.,	)	06-50327 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
IN 7 CLOTHING, INC., IN 7	)	06-50328 (KJC)
CLOTHING CO., INC./	)	
CIT GROUP INC./COMMERCIAL	)	

# EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re	)	
	)	
FACTORY 2-U STORES, INC., a/k/a	)	Chapter 7
FACTORY 2-U, f/a/k/a GENERAL	)	
TEXTILES, INC., f/a/k/a GENERAL	)	Case No. 04-10111 (PJW)
TEXTILES, f/a/k/a FAMILY BARGAIN	)	
CORPORATION, f/a/k/a FAMILY	)	
BARGAIN CENTER,	)	
	)	
Debtor.	)	
	)	
JEOFFREY L. BURTCH,	)	
CHAPTER 7 TRUSTEE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>Adv. Proc. Nos.</u>
	)	
LEEMO USA INC./	)	05-30002 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
LOTUS APPAREL INC./	)	05-30057 (KJC)
FINANCE ONE INC.,	)	
	)	
MYSTIQUE APPAREL GROUP INC./	)	05-30065 (KJC)
CIT GROUP INC.,	)	
	)	
PORTICO APPAREL LP/	)	05-30086 (KJC)
CIT GROUP, INC.,	)	
	)	
S.A.S.C.O. TRADING INC./	)	05-30091 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
SNOOP DOGG CLOTHING, AKNY INC./	)	05-30098 (KJC)
CIT GROUP, INC.,	)	
	)	
WOODS & GRAY LTD./	)	05-30133 (KJC)
CIT GROUP, INC.,	)	
	)	
KS TRADING CORP./	)	05-30192 (KJC)
CIT GROUP, INC.,	)	

DKT. NO. Various  
DT. FILED 8/15/07

JOHN PAUL RICHARD/ CIT GROUP, INC.,	)	05-30197 (KJC)
	)	
NEW TECHNICAL GROUP, INC./ CIT GROUP, INC.,	)	05-30246 (KJC)
	)	
SECOND GENERATION INC./ CONTINENTAL BUSINESS CREDIT, INC.,	)	05-30471 (KJC)
	)	
DECOLINE INTERNATIONAL, INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-30474 (KJC)
	)	
MDR CLOTHING, INC., ALMOST NOTHING, INC./ CONTINENTAL BUSINESS CREDIT INC.,	)	05-30673 (KJC)
	)	
INNOVATIVE COSMETICS CONCEPTS L.L.C./ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52559 (KJC)
	)	
G III APPAREL GROUP, LTD.,	)	05-52582 (KJC)
	)	
YG DESIGNS INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-52668 (KJC)
	)	
YOU AND ME LEGWEAR LLC, SEATTLE PACIFIC INDUSTRIES, INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-52669 (KJC)
	)	
WEEPLAY KIDS L.L.C./ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52671 (KJC)
	)	
SELECT CLOTHING CO., INC./ CIT GROUP INC/ COMMERCIAL SERVICES, INC.,	)	05-52697 (KJC)
	)	
RANDAZZO ENTERPRISES, LLC d/b/a SUNSHINE HOME PRODUCTS/ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52721 (KJC)
	)	
ALWAYS HAPPY SPORTSWEAR INC./ CIT GROUP/BUSINESS CREDIT, INC.,	)	05-52773 (KJC)
	)	
GLOBAL MERCHANDISE LLC/	)	05-52993 (KJC)

GENERAL BUSINESS CREDIT,	)	
J&L FOOTWEAR INC./	)	
CIT GROUP, INC.,	)	05-53016 (KJC)
MOSHAY INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53032 (KJC)
SERVICES, INC.,	)	
FRANSHAW, INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53047 (KJC)
SERVICES, INC.,	)	
DAVID'S PLACE OFF PRICE	)	
CLOTHING CO., INC./	)	05-53060 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
ROYAL ITEMS, INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53118 (KJC)
SERVICES, INC.,	)	
PARAMOUNT APPAREL, LTD. f/k/a	)	
USA AMICO, LTD./	)	05-53120 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
SMART INVENTIONS INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53123 (KJC)
SERVICES, INC.,	)	
SAMSUNG AMERICA INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53205 (KJC)
SERVICES, INC.,	)	
CHERRY STIX LTD., CHERRY STIX	)	
KIDS, LTD./	)	06-50018 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
CACTUS TRADING, INC., REVERE	)	
TEXTILE COMPANY, INC./	)	06-50019 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./	)	
COMMERCIAL SERVICES, INC.,	)	

CROWN CRAFTS INFANT	)	06-50020 (KJC)
PRODUCTS, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.	)	
	)	
CELEBRITY INTERNATIONAL INC./	)	06-50021 (KJC)
FIDELITY FACTORS, L.L.C./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
BILLION TOWER INTERNATIONAL LLC	)	06-50082 (KJC)
HSBC BUSINESS CREDIT (USA) INC./	)	
CIT GROUP, INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ANDREWS SPORT CLUB, INC./	)	06-50161 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BARON DISTRIBUTORS, INC./	)	06-50162 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BENTEX GROUP, INC./	)	06-50163 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BREAKER JEANSWEAR CORP. d/b/a	)	06-50165 (KJC)
JALATE LTD./	)	
CIT GROUP INC./CMS, INC.,	)	
	)	
DIVISION SIX SPORTS, INC./	)	06-50166 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
DORAN LOREN L.L.C./	)	06-50167 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
MIDTOWN CLOSEOUT, INC./	)	06-50171 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
MIRTH INC. d/b/a COUGAR	)	06-50172 (KJC)
INTERNATIONAL/	)	
CIT GROUP INC./CMS, INC.,	)	
	)	
MJT IMPORTS CORPORATION/	)	06-50173 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
PACO SPORT, LTD./	)	06-50175 (KJC)
CIT GROUP INC./COMMERCIAL	)	



SERVICES, INC.,	)	
	)	
PAN OCEANIC GROUP, INC, PANO	)	06-50176 (KJC)
OFF PRICE, LTD./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC./GE CAPITAL	)	
COMMERCIAL SERVICES, INC.,	)	
	)	
TARGET RESOURCES, INC./	)	06-50179 (KJC)
CIT GROUP/CMS, INC.,	)	
	)	
IFG CORPORATION/	)	06-50200 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
PANTIES PLUS, INC./	)	06-50207 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ALLIANCE WHOLESALE CORP./	)	06-50215 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ALONA APPAREL INC. a/k/a POSITANO/	)	06-50218 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
PUZZLES ENTERPRISES, INC./	)	06-50221 (KJC)
L.A. MAIN CONNECTION, INC.,	)	
	)	
ACCESS BASIC BLUE JEANS CORP./	)	06-50223 (KJC)
HANA FINANCIAL, INC.,	)	
	)	
AMEREX GROUP, INC. d/b/a	)	06-50228 (KJC)
AMEREX OF CALIFORNIA CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
AMERICAN BASICS CO., L.L.C. a/k/a	)	06-50229 (KJC)
ABC/CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GLENOIT UNIVERSAL, LTD.,	)	06-50231 (KJC)
GLENOIT L.L.C./	)	
CIT GROUP INC./COMMERCIAL	)	

SERVICES, INC.,	)	
	)	
GINA HOSIERY, LTD./	)	06-50232 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GARY STEINER SALES, INC./	)	06-50233 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GLOBAL GOLD, INC., GLOBAL	)	06-50237 (KJC)
APPAREL, L.L.C., PLANET GOLD	)	
CLOTHING COMPANY INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
M. HIDARY & COMPANY INC./	)	06-50238 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
H.G. HOSIERY ASSOCIATES, INC./	)	06-50240 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HAMCO, INC./	)	06-50243 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HARVIC INTERNATIONAL LTD./	)	06-50244 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HEMISPHERE WORLDWIDE SALES, INC./	)	06-50245 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
PANDELCO, INC. d/b/a L.A. MOVERS/	)	06-50251 (KJC)
CIT GROUP INC./ COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
LUGGAGE AMERICA, INC. d/b/a	)	06-50255 (KJC)
OLYMPIA INTERNATIONAL/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	

KAKTUS SPORTSWEAR, INC./	)	06-50270 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
REVERE MILLS, INC./	)	06-50272 (KJC)
CIT GROUP, INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
SARAMAX APPAREL GROUP, INC./	)	06-50274 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
TREVCO, INC.,	)	06-50277 (KJC)
	)	
USA TEASE INC., SRA APPAREL, INC.,	)	06-50292 (KJC)
SRA APPAREL CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GMA ACCESSORIES, INC. d/b/a	)	06-50296 (KJC)
CAPELLI OF NY, CAPELLI OF	)	
NEW YORK, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
RIGO INTERNATIONAL, INC./	)	06-50297 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
SCOPE IMPORTS INC., SCOPE	)	06-50299 (KJC)
APPAREL, L.P./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
VAN DALE INDUSTRIES, INC.,	)	06-50304 (KJC)
	)	
TIP TOP PANTS, INC. a/k/a	)	06-50323 (KJC)
TIP TOP PANT INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
CHF INDUSTRIES, INC.,	)	06-50327 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
IN 7 CLOTHING, INC., IN 7	)	06-50328 (KJC)
CLOTHING CO., INC./	)	
CIT GROUP INC./COMMERCIAL	)	

SERVICES, INC.,	)	
	)	
INNOVO INC., INNOVO GROUP, INC./	)	06-50333 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
INTERTEX APPAREL LTD./	)	06-50338 (KJC)
GE CAPITAL COMMERCIAL	)	
SERVICES, INC./CIT GROUP INC./	)	
COMMERCIAL SERVICES, INC.,	)	
	)	
PERFECT FIT INDUSTRIES, INC./	)	06-50370 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
M.R.S., INC. d/b/a CARESSE	)	06-50373 (KJC)
LINGERIE, CARESSE LINGERIE, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
RAIDER JEAN, L.L.C., MARKO APPAREL	)	06-50377 (KJC)
OF NEW YORK LTD. d/b/a	)	
RAIDER JEAN COMPANY/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ALBERT ASSOR d/b/a COCONUT GROVE	)	06-50381 (KJC)
DESIGN, ADABERPI CORP. d/b/a	)	
COCONUT GROVE DESIGN/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GOLDEN TOO, INC., PLANET GOLD	)	06-50382 (KJC)
CLOTHING COMPANY, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
JUST FOR WRAPS, INC., d/b/a	)	06-50384 (KJC)
WRAPPER, JUST FOR WRAPS/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
TURN ON PRODUCTS, INC. d/b/a	)	06-50390 (KJC)
YOUNIQUE CLOTHING CO./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	

AMERICAN LIGHTING INDUSTRY INC.	)	06-50392 (KJC)
a/k/a AMERICAN LIGHTING USA/	)	
RTA FURNITURE OF AMERICA/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
TRANSCO MERCHANDISE, INC. a/k/a	)	06-50395 (KJC)
TRANSCO TRADING, TRANSCO TRADING	)	
CO., TRANSCO TRADING CORP.,	)	
TRANSCO IMPORTS CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
BMGM CO., L.L.C. d/b/a	)	06-50398 (KJC)
HONEYCOMB KIDS/	)	
GMAC COMMERCIAL FINANCE L.L.C./	)	
CIT GROUP INC./ COMMERCIAL	)	
SERVICES, INC.,	)	
STRETCH-O-RAMA, INC., d/b/a	)	06-50399 (KJC)
LONGSTREET, KIDSZONE CLOTHING CO.,	)	
NASCAR, SAHARA, GENUINE SCHOOL	)	
UNIFORM, MIDTOWN CLOSEOUTS,	)	
PRIMARY/CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
LILY BLEU, INC. D/B/A LILY BLEU,	)	06-50400 (KJC)
KIM & CAMI PRODUCTIONS INC./	)	
SUNTRUST BANKS, INC.,	)	
AMERICAN CHARACTER CLASSICS INC.,	)	06-50430 (KJC)
MAMIYE BROTHERS INC.	)	
a/k/a MAMIYE SALES/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
GOLD MEDAL HOSIERY CO.,	)	06-50431 (KJC)
PREGER AND WERTENTEIL INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
SOLED OUT SOCKS INC. /	)	05-30100 (KJC)
GMAC COMMERCIAL CREDIT,	)	
FAST FORWARD, LLC /	)	05-30156 (KJC)

GMAC COMMERCIAL FINANCE,	)	
SILVER GOOSE, INC. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	05-30463 (KJC)
STAR REGENT APPAREL, INC.,	)	
STAR REGENT INTERNATIONAL INC./	)	05-30476 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
ATLANTIC HOSIERY, INC. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	05-30477 (KJC)
PARK B. SMITH INC. D/B/A SMITH AND	)	
JOHNSON AND D/B/A PARK B. SMITH LTD.,	)	05-30479 (KJC)
PARK B. SMITH SR. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
ISAAC MORRIS, LTD.	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	05-53237 (KJC)
ISAAC MORRIS, LTD. D/B/A E BABY,	)	
E-BABY L.L.C. /	)	06-50004 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
ALL-WAYS SPORTSWEAR, LTD. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	06-50035 (KJC)
GREAT WALL CORP. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	06-50041 (KJC)
OUTERSTUFF, LTD. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	06-50132 (KJC)
AMERICAN MARKETING ENTERPRISES,	)	
INC. / GMAC COMMERCIAL FINANCE L.L.C.,	)	06-50220 (KJC)
HAYWIN TEXTILE PRODUCTS, INC. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	06-50246 (KJC)
RK INDUSTRIES INC. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	06-50298 (KJC)
WIESNER PRODUCTS, INC. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	06-50365 (KJC)
ACCESSORY NETWORK GROUP, LLC A/K/A	)	06-50378 (KJC)

ACCESSORY NETWORK GROUP /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
AMICA APPAREL CORP. D/B/A	)	06-50379 (KJC)
SQUEEZE KIDS /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
STYLE N DESIGN, INC. and	)	05-30464 (KJC)
STERLING FACTORS CORPORATION,	)	
	)	
PACIFIC TEAZE and	)	06-50135 (KJC)
STERLING FACTORS CORPORATION,	)	
	)	
CELEBRATION TRADING, INC.	)	05-30746 (KJC)
CELEBRATION IL, INC., d/b/a	)	
CELEBRATION TRADING, INC.	)	
SALES EXCHANGE, INC. d/b/a	)	
CELEBRATION TRADING, INC.	)	
and STERLING FACTORS CORPORATION,	)	
	)	
TKO ORIGINALS LTD A/K/A	)	06-50367 (KJC)
TKO ORIGINALS LTD	)	
and LES ORIGINAUX TKO LTD	)	
and STERLING FACTORS CORPORATION,	)	
	)	
NATCO PRODUCTS CORPORATION AND	)	06-50085 (KJC)
MILBERG FACTORS INC.,	)	
	)	
M ARON CORPORATION AND	)	05-30067 (KJC)
MILBERG FACTORS INC.,	)	
	)	
A.L.T. SPORTSWEAR, INC. AND	)	05-30669 (KJC)
MILBERG FACTORS INC.,	)	
	)	
KIDS HEADQUARTERS INC. A/K/A	)	06-50429 (KJC)
KIDS HEADQUARTERS,	)	
WEAR ME APPAREL CORP., AND	)	
MILBERG FACTORS INC.,	)	
	)	
LOUISE PARIS, LTD. AND	)	06-50366 (KJC)
MILBERG FACTORS INC.,	)	
	)	
SML SPORT LTD. AND	)	05-52694 (KJC)
MILBERG FACTORS INC.,	)	
	)	
MADISON INDUSTRIES, INC. AND	)	06-50342 (KJC)

MILBERG FACTORS INC.,	)	
	)	
GARLAND SALES, INC. AND	)	06-50040 (KJC)
MILBERG FACTORS INC.,	)	
	)	
JDR APPAREL GROUP, L.L.C. and	)	05-30750 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
JERRY LEIGH OF CALIFORNIA INC.	)	05-30752 (KJC)
JERRY LEIGH ENTERTAINMENT	)	
APPAREL INC. and HSBC BUSINESS CREDIT	)	
(USA) INC.,	)	
	)	
ALMAR SALES COMPANY INC. D/B/A	)	06-50033 (KJC)
ASC PROMOTIONS and HSBC BUSINESS	)	
CREDIT (USA) INC.,	)	
	)	
AMERISPORT, L.L.C. and HSBC BUSINESS	)	06-50034 (KJC)
CREDIT (USA) INC.,	)	
	)	
THE NORTHWEST COMPANY INC. D/B/A	)	06-50174 (KJC)
WILMINGTON PRODUCTS USA, INC.	)	
and HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
FUNNY EXPRESSIONS, INC. and	)	06-50235 (KJC)
and HSBC BUSINESS CREDIT	)	
(USA) INC.,	)	
	)	
FASHION OPTION INC. D/B/A GENERATION	)	06-50045 (KJC)
ONE APPAREL, INC. /	)	
ROSENTHAL & ROSENTHAL INC.,	)	
	)	
MICHAEL'S NEW YORK JEAN CO. INC.	)	05-30063 (KJC)
CAPITAL FACTORS,	)	
	)	
CHOICE APPAREL, INC.	)	05-30148 (KJC)
CAPITAL FACTORS,	)	
	)	
BY DESIGN, LLC	)	05-30457 (KJC)
CAPITAL FACTORS, INC.,	)	
	)	
DESIRE SPORTSWEAR, INC.	)	05-30460 (KJC)
CAPITAL FACTORS, INC.,	)	
	)	
I-FE APPAREL, INC.	)	05-53037 (KJC)
CAPITAL FACTORS, LLC,	)	



MILANO MANHATTAN, LTD.	)	
CAPITAL FACTORS, INC.,	)	06-50049 (KJC)
	)	
TRENDS CLOTHING CORP.	)	
CAPITAL FACTORS, INC.,	)	06-50275 (KJC)
	)	
INDULGENCE JEANS/TRENDY LOOKS	)	
CAPITAL FACTORS, INC.,	)	05-30748 (KJC)
	)	
Defendants.	)	

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**TRUSTEE'S MOTION PURSUANT TO 11 U.S.C. §105 (d) FOR A STATUS  
CONFERENCE IN CONNECTION WITH CERTAIN PENDING ADVERSARY  
PROCEEDINGS**

Jeffrey L. Burch, Chapter 7 Trustee (the "Trustee" and/or "Plaintiff") for the estate of Factory 2-U Stores, Inc. (the "Debtor" and/or "Factory 2-U"), pursuant to 11 U.S.C. § 105 (d), hereby moves this Court to conduct a general status conference regarding the above-captioned adversary proceedings in order to address recent developments affecting these matters and their respective pretrial schedules. Trustee's Counsel has been advised that if the Court is amenable to conducting a 105 (d) status conference, it may occur on August 23, 2007 at 3:30 p.m. The purpose of this Motion, for which the Trustee seeks expedited consideration, is to request the conference and to advise the Court and Defendants of the subjects that the Trustee respectfully requests be addressed. In support thereof, the Trustee states as follows:

1. On January 13, 2004 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

2. This case converted to an action under Chapter 7 on January 27, 2005. Jeoffrey L. Burch was appointed as Interim Trustee on January 27, 2005 pursuant to Section 701 of the Bankruptcy Code and is serving as the Trustee of this Estate pursuant to Section 702(d) of the same.

3. Beginning in October 2005, over 800 preference proceedings were filed by the Trustee. Plaintiff requests a status conference for approximately 140 of the still pending actions, all of which involve a "factor" named as at least one of the Defendants (the "Factor Preference Actions").

4. Information has developed that affects the pretrial schedules for the Factor Preference Actions. The factor defendants have consistently produced in discovery little to no communications with the Debtor or co-defendants and other factor defendants. The Trustee has found amidst the approximately 5000 boxes of information placed in storage by the Debtor approximately six boxes that contained computer back-up tapes. The box descriptions did not indicate that computer information was contained therein. The laborious, expensive process of uploading the information and reviewing it continues. The review has yielded many emails containing communications between factors and/or their vendors and Factory 2-U during the relevant time period concerning topics such as payment terms and credit lines. The Trustee respectfully submits that he has the right to obtain such relevant, important information from the factors and their vendors as part of the discovery process in these matters.

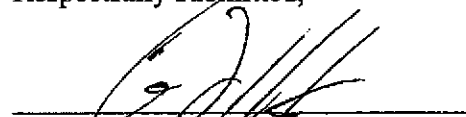
5. In addition, documents produced by one of the factors and information learned during a deposition reflect anti-competitive activities undertaken by the factors as a group such that payments during the preference period cannot be categorized as

occurring in the "ordinary course of business". The factors discussed subjects such as payment terms, credit lines, surcharges and requests for security such as letters of credit. These group activities exerted pressure on the Debtor in terms of its preference period payments. Further, this information may give rise to additional causes of action to be asserted by the Trustee on behalf of the estate against the factor defendants, such as claims based on violations of antitrust statutes.

6. It is respectfully submitted that the Factor Preference Actions have developed into matters far more complex than typical or "run of the mill" Section 547 proceeding. Information relating to the Trustee's response to the factors' ordinary course of business affirmative defense claims will also relate to potential additional antitrust causes of action to be brought by the Trustee. Accordingly, the Trustee has requested a status conference with the Court in order to provide a forum in which to address these developments and the most appropriate future proceedings in these matters.

Dated: August 15, 2007  
Wilmington, Delaware

Respectfully submitted,



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Ian Connor Bifferato (No. 3273)  
Linda Richenderfer (No. 4138)  
Garvan F. McDaniel (No. 4167)  
BIFFERATO GENTILOTTI LLC  
800 N. King Street, Plaza Level  
Wilmington, DE 19801

-and-

/s/ Robert W. Pedigo

Robert W. Pedigo (No. 4047)

George R. Tsakataras (No. 3911)

COOCH AND TAYLOR

824 Market Street, Suite 1000

Wilmington, DE 19801

*Co-Counsel for Plaintiff Jeoffrey L.  
Burtch, Chapter 7 Trustee*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

FACTORY 2-U STORES, INC., a/k/a  
FACTORY 2-U, f/a/k/a GENERAL  
TEXTILES, INC., f/a/k/a GENERAL  
TEXTILES, f/a/k/a FAMILY BARGAIN  
CORPORATION, f/a/k/a FAMILY  
BARGAIN CENTER,

Debtor.

**JEOFFREY L. BURTCH,**  
**CHAPTER 7 TRUSTEE.**

Plaintiff,

V.

LEEMO USA INC./  
HSBC BUSINESS CREDIT (USA) INC.,

LOTUS APPAREL INC./  
FINANCE ONE INC.,

MYSTIQUE APPAREL GROUP INC./  
CIT GROUP INC.,

PORTICO APPAREL LP/  
CIT GROUP, INC.,

S.A.S.C.O. TRADING INC./  
HSBC BUSINESS CREDIT (USA) INC.,

SNOOP DOGG CLOTHING, AKNY INC./  
CIT GROUP, INC.,

WOODS & GRAY LTD./  
CTT GROUP, INC.,

KS TRADING CORP./  
CIT GROUP, INC.,

## Chapter 7

Case No. 04-10111 (PJW)

Adv. Proc. Nos.

05-30002 (KJC)

05-30057 (KJC)

05-30065 (KJC)

05-30086 (KJC)

05-30091 (KJC)

05-30098 (KJC)

05-30133 (KJC)

05-30192 (KJC)

JOHN PAUL RICHARD/ CIT GROUP, INC.,	)	05-30197 (KJC)
	)	
NEW TECHNICAL GROUP, INC./ CIT GROUP, INC.,	)	05-30246 (KJC)
	)	
SECOND GENERATION INC./ CONTINENTAL BUSINESS CREDIT, INC.,	)	05-30471 (KJC)
	)	
DECOLINE INTERNATIONAL, INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-30474 (KJC)
	)	
MDR CLOTHING, INC., ALMOST NOTHING, INC./ CONTINENTAL BUSINESS CREDIT INC.,	)	05-30673 (KJC)
	)	
INNOVATIVE COSMETICS CONCEPTS L.L.C./ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52559 (KJC)
	)	
G III APPAREL GROUP, LTD.,	)	05-52582 (KJC)
	)	
YG DESIGNS INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-52668 (KJC)
	)	
YOU AND ME LEGWEAR LLC, SEATTLE PACIFIC INDUSTRIES, INC./ HSBC BUSINESS CREDIT (USA) INC.,	)	05-52669 (KJC)
	)	
WEEPLAY KIDS L.L.C./ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52671 (KJC)
	)	
SELECT CLOTHING CO., INC./ CIT GROUP INC/ COMMERCIAL SERVICES, INC.,	)	05-52697 (KJC)
	)	
RANDAZZO ENTERPRISES, LLC d/b/a SUNSHINE HOME PRODUCTS/ CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	05-52721 (KJC)
	)	
ALWAYS HAPPY SPORTSWEAR INC./ CIT GROUP/BUSINESS CREDIT, INC.,	)	05-52773 (KJC)
	)	
GLOBAL MERCHANDISE LLC/	)	05-52993 (KJC)

GENERAL BUSINESS CREDIT,	)	
J&L FOOTWEAR INC./	)	
CIT GROUP, INC.,	)	05-53016 (KJC)
MOSHAY INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53032 (KJC)
SERVICES, INC.,	)	
FRANSHAW, INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53047 (KJC)
SERVICES, INC.,	)	
DAVID'S PLACE OFF PRICE	)	
CLOTHING CO., INC./	)	05-53060 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
ROYAL ITEMS, INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53118 (KJC)
SERVICES, INC.,	)	
PARAMOUNT APPAREL, LTD. f/k/a	)	
USA AMICO, LTD./	)	05-53120 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
SMART INVENTIONS INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53123 (KJC)
SERVICES, INC.,	)	
SAMSUNG AMERICA INC./	)	
CIT GROUP INC./COMMERCIAL	)	05-53205 (KJC)
SERVICES, INC.,	)	
CHERRY STIX LTD., CHERRY STIX	)	
KIDS, LTD./	)	06-50018 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
CACTUS TRADING, INC., REVERE	)	
TEXTILE COMPANY, INC./	)	06-50019 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./	)	
COMMERCIAL SERVICES, INC.,	)	

CROWN CRAFTS INFANT PRODUCTS, INC./	)	06-50020 (KJC)
CIT GROUP INC./COMMERCIAL SERVICES, INC.	)	
	)	
CELEBRITY INTERNATIONAL INC./	)	06-50021 (KJC)
FIDELITY FACTORS, L.L.C./	)	
CIT GROUP INC./COMMERCIAL SERVICES, INC.,	)	
	)	
BILLION TOWER INTERNATIONAL LLC	)	06-50082 (KJC)
HSBC BUSINESS CREDIT (USA) INC./	)	
CIT GROUP, INC./COMMERCIAL SERVICES, INC.,	)	
	)	
ANDREWS SPORT CLUB, INC./	)	06-50161 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BARON DISTRIBUTORS, INC./	)	06-50162 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BENTEX GROUP, INC./	)	06-50163 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
BREAKER JEANSWEAR CORP. d/b/a	)	06-50165 (KJC)
JALATE LTD./	)	
CIT GROUP INC./CMS, INC.,	)	
	)	
DIVISION SIX SPORTS, INC./	)	06-50166 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
DORAN LOREN L.L.C./	)	06-50167 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
MIDTOWN CLOSEOUT, INC./	)	06-50171 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
MIRTH INC. d/b/a COUGAR	)	06-50172 (KJC)
INTERNATIONAL/	)	
CIT GROUP INC./CMS, INC.,	)	
	)	
MJT IMPORTS CORPORATION/	)	06-50173 (KJC)
CIT GROUP INC./CMS, INC.,	)	
	)	
PACO SPORT, LTD./	)	06-50175 (KJC)
CIT GROUP INC./COMMERCIAL	)	



SERVICES, INC.,	)	
PAN OCEANIC GROUP, INC, PANO	)	
OFF PRICE, LTD./	)	06-50176 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC./GE CAPITAL	)	
COMMERCIAL SERVICES, INC.,	)	
TARGET RESOURCES, INC./	)	06-50179 (KJC)
CIT GROUP/CMS, INC.,	)	
IFG CORPORATION/	)	06-50200 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
PANTIES PLUS, INC./	)	06-50207 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
ALLIANCE WHOLESALE CORP./	)	06-50215 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
ALONA APPAREL INC. a/k/a POSITANO/	)	06-50218 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
PUZZLES ENTERPRISES, INC./	)	06-50221 (KJC)
L.A. MAIN CONNECTION, INC.,	)	
ACCESS BASIC BLUE JEANS CORP./	)	06-50223 (KJC)
HANA FINANCIAL, INC.,	)	
AMEREX GROUP, INC. d/b/a	)	06-50228 (KJC)
AMEREX OF CALIFORNIA CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
AMERICAN BASICS CO., L.L.C. a/k/a	)	06-50229 (KJC)
ABC/CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
GLENOIT UNIVERSAL, LTD.,	)	06-50231 (KJC)
GLENOIT L.L.C./	)	
CIT GROUP INC./COMMERCIAL	)	

SERVICES, INC.,	)	
	)	
GINA HOSIERY, LTD./	)	06-50232 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GARY STEINER SALES, INC./	)	06-50233 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GLOBAL GOLD, INC., GLOBAL	)	06-50237 (KJC)
APPAREL, L.L.C., PLANET GOLD	)	
CLOTHING COMPANY INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
M. HIDARY & COMPANY INC./	)	06-50238 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
H.G. HOSIERY ASSOCIATES, INC./	)	06-50240 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HAMCO, INC./	)	06-50243 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HARVIC INTERNATIONAL LTD./	)	06-50244 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
HEMISPHERE WORLDWIDE SALES, INC./	)	06-50245 (KJC)
GE CAPITAL COMMERCIAL SERVICES,	)	
INC./CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
PANDELCO, INC. d/b/a L.A. MOVERS/	)	06-50251 (KJC)
CIT GROUP INC./ COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
LUGGAGE AMERICA, INC. d/b/a	)	06-50255 (KJC)
OLYMPIA INTERNATIONAL/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	

KAKTUS SPORTSWEAR, INC./	)	06-50270 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
REVERE MILLS, INC./	)	06-50272 (KJC)
CIT GROUP, INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
SARAMAX APPAREL GROUP, INC./	)	06-50274 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
TREVCO, INC.,	)	06-50277 (KJC)
	)	
USA TEASE INC., SRA APPAREL, INC.,	)	06-50292 (KJC)
SRA APPAREL CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GMA ACCESSORIES, INC. d/b/a	)	06-50296 (KJC)
CAPELLI OF NY, CAPELLI OF	)	
NEW YORK, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
RIGO INTERNATIONAL, INC./	)	06-50297 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
SCOPE IMPORTS INC., SCOPE	)	06-50299 (KJC)
APPAREL, L.P./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
VAN DALE INDUSTRIES, INC.,	)	06-50304 (KJC)
	)	
TIP TOP PANTS, INC. a/k/a	)	06-50323 (KJC)
TIP TOP PANT INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
CHF INDUSTRIES, INC.,	)	06-50327 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
IN 7 CLOTHING, INC., IN 7	)	06-50328 (KJC)
CLOTHING CO., INC./	)	
CIT GROUP INC./COMMERCIAL	)	

SERVICES, INC.,	)	
	)	
INNOVO INC., INNOVO GROUP, INC./	)	06-50333 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
INTERTEX APPAREL LTD./	)	06-50338 (KJC)
GE CAPITAL COMMERCIAL	)	
SERVICES, INC./CIT GROUP INC./	)	
COMMERCIAL SERVICES, INC.,	)	
	)	
PERFECT FIT INDUSTRIES, INC./	)	06-50370 (KJC)
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
M.R.S., INC. d/b/a CARESSE	)	06-50373 (KJC)
LINGERIE, CARESSE LINGERIE, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
RAIDER JEAN, L.L.C., MARKO APPAREL	)	06-50377 (KJC)
OF NEW YORK LTD. d/b/a	)	
RAIDER JEAN COMPANY/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
ALBERT ASSOR d/b/a COCONUT GROVE	)	06-50381 (KJC)
DESIGN, ADABERPI CORP. d/b/a	)	
COCONUT GROVE DESIGN/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
GOLDEN TOO, INC., PLANET GOLD	)	06-50382 (KJC)
CLOTHING COMPANY, INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
JUST FOR WRAPS, INC., d/b/a	)	06-50384 (KJC)
WRAPPER, JUST FOR WRAPS/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
	)	
TURN ON PRODUCTS, INC. d/b/a	)	06-50390 (KJC)
YOUNIQUE CLOTHING CO./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	

AMERICAN LIGHTING INDUSTRY INC.	)	06-50392 (KJC)
a/k/a AMERICAN LIGHTING USA/	)	
RTA FURNITURE OF AMERICA/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
TRANSCO MERCHANDISE, INC. a/k/a	)	06-50395 (KJC)
TRANSCO TRADING, TRANSCO TRADING	)	
CO., TRANSCO TRADING CORP.,	)	
TRANSCO IMPORTS CORP./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
BMGM CO., L.L.C. d/b/a	)	06-50398 (KJC)
HONEYCOMB KIDS/	)	
GMAC COMMERCIAL FINANCE L.L.C./	)	
CIT GROUP INC./ COMMERCIAL	)	
SERVICES, INC.,	)	
STRETCH-O-RAMA, INC., d/b/a	)	06-50399 (KJC)
LONGSTREET, KIDZONE CLOTHING CO.,	)	
NASCAR, SAHARA, GENUINE SCHOOL	)	
UNIFORM, MIDTOWN CLOSEOUTS,	)	
PRIMARY/CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
LILY BLEU, INC. D/B/A LILY BLEU,	)	06-50400 (KJC)
KIM & CAMI PRODUCTIONS INC./	)	
SUNTRUST BANKS, INC.,	)	
AMERICAN CHARACTER CLASSICS INC.,	)	06-50430 (KJC)
MAMIYE BROTHERS INC.	)	
a/k/a MAMIYE SALES/	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
GOLD MEDAL HOSIERY CO.,	)	06-50431 (KJC)
PREGER AND WERTENTEIL INC./	)	
CIT GROUP INC./COMMERCIAL	)	
SERVICES, INC.,	)	
SOLED OUT SOCKS INC. /	)	05-30100 (KJC)
GMAC COMMERCIAL CREDIT,	)	
FAST FORWARD, LLC /	)	05-30156 (KJC)

GMAC COMMERCIAL FINANCE,	)	
	)	
SILVER GOOSE, INC. /	)	05-30463 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
STAR REGENT APPAREL, INC.,	)	05-30476 (KJC)
STAR REGENT INTERNATIONAL INC./	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ATLANTIC HOSIERY, INC. /	)	05-30477 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
PARK B. SMITH INC. D/B/A SMITH AND	)	05-30479 (KJC)
JOHNSON AND D/B/A PARK B. SMITH LTD.,	)	
PARK B. SMITH SR. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ISAAC MORRIS, LTD.	)	05-53237 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ISAAC MORRIS, LTD. D/B/A E BABY,	)	06-50004 (KJC)
E-BABY L.L.C. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ALL-WAYS SPORTSWEAR, LTD. /	)	06-50035 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
GREAT WALL CORP. /	)	06-50041 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
OUTERSTUFF, LTD. /	)	06-50132 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
AMERICAN MARKETING ENTERPRISES,	)	06-50220 (KJC)
INC. / GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
HAYWIN TEXTILE PRODUCTS, INC. /	)	06-50246 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
RK INDUSTRIES INC. /	)	06-50298 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
WIESNER PRODUCTS, INC. /	)	06-50365 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ACCESSORY NETWORK GROUP, LLC A/K/A	)	06-50378 (KJC)

ACCESSORY NETWORK GROUP /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
AMICA APPAREL CORP. D/B/A	)	06-50379 (KJC)
SQUEEZE KIDS /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
STYLE N DESIGN, INC. and	)	05-30464 (KJC)
STERLING FACTORS CORPORATION,	)	
	)	
PACIFIC TEAZE and	)	06-50135 (KJC)
STERLING FACTORS CORPORATION,	)	
	)	
CELEBRATION TRADING, INC.	)	05-30746 (KJC)
CELEBRATION II, INC., d/b/a	)	
CELEBRATION TRADING, INC.	)	
SALES EXCHANGE, INC. d/b/a	)	
CELEBRATION TRADING, INC.	)	
and STERLING FACTORS CORPORATION,	)	
	)	
TKO ORIGINALS LTD A/K/A	)	06-50367 (KJC)
TKO ORIGINALS LTD	)	
and LES ORIGINAUX TKO LTD	)	
and STERLING FACTORS CORPORATION,	)	
	)	
NATCO PRODUCTS CORPORATION AND	)	06-50085 (KJC)
MILBERG FACTORS INC.,	)	
	)	
M ARON CORPORATION AND	)	05-30067 (KJC)
MILBERG FACTORS INC.,	)	
	)	
A.L.T. SPORTSWEAR, INC. AND	)	05-30669 (KJC)
MILBERG FACTORS INC.,	)	
	)	
KIDS HEADQUARTERS INC. A/K/A	)	06-50429 (KJC)
KIDS HEADQUARTERS,	)	
WEAR ME APPAREL CORP., AND	)	
MILBERG FACTORS INC.,	)	
	)	
LOUISE PARIS, LTD. AND	)	06-50366 (KJC)
MILBERG FACTORS INC.,	)	
	)	
SML SPORT LTD. AND	)	05-52694 (KJC)
MILBERG FACTORS INC.,	)	
	)	
MADISON INDUSTRIES, INC. AND	)	06-50342 (KJC)

MILBERG FACTORS INC.,	)	
	)	
GARLAND SALES, INC. AND	)	06-50040 (KJC)
MILBERG FACTORS INC.,	)	
	)	
JDR APPAREL GROUP, L.L.C. and	)	05-30750 (KJC)
HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
JERRY LEIGH OF CALIFORNIA INC.	)	05-30752 (KJC)
JERRY LEIGH ENTERTAINMENT	)	
APPAREL INC. and HSBC BUSINESS CREDIT	)	
(USA) INC.,	)	
	)	
ALMAR SALES COMPANY INC. D/B/A	)	06-50033 (KJC)
ASC PROMOTIONS and HSBC BUSINESS	)	
CREDIT (USA) INC.,	)	
	)	
AMERISPORT, L.L.C. and HSBC BUSINESS	)	06-50034 (KJC)
CREDIT (USA) INC.,	)	
	)	
THE NORTHWEST COMPANY INC. D/B/A	)	06-50174 (KJC)
WILMINGTON PRODUCTS USA, INC.	)	
and HSBC BUSINESS CREDIT (USA) INC.,	)	
	)	
FUNNY EXPRESSIONS, INC. and	)	06-50235 (KJC)
and HSBC BUSINESS CREDIT	)	
(USA) INC.,	)	
	)	
FASHION OPTION INC. D/B/A GENERATION	)	06-50045 (KJC)
ONE APPAREL, INC. /	)	
ROSENTHAL & ROSENTHAL INC.,	)	
	)	
MICHAEL'S NEW YORK JEAN CO. INC.	)	05-30063 (KJC)
CAPITAL FACTORS,	)	
	)	
CHOICE APPAREL, INC.	)	05-30148 (KJC)
CAPITAL FACTORS,	)	
	)	
BY DESIGN, LLC	)	05-30457 (KJC)
CAPITAL FACTORS, INC.,	)	
	)	
DESIRE SPORTSWEAR, INC.	)	05-30460 (KJC)
CAPITAL FACTORS, INC.,	)	
	)	
I-FE APPAREL, INC.	)	05-53037 (KJC)
CAPITAL FACTORS, LLC,	)	



MILANO MANHATTAN, LTD.  
CAPITAL FACTORS, INC.,

TRENDS CLOTHING CORP.  
CAPITAL FACTORS, INC.,

INDULGENCE JEANS/TRENDY LOOKS  
CAPITAL FACTORS, INC.,

Defendants.

)  
) 06-50049 (KJC)  
)  
)

) 06-50275 (KJC)  
)  
)

) 05-30748 (KJC)  
)  
)  
)  
)  
)  
)

**ORDER GRANTING TRUSTEE'S MOTION PURSUANT TO 11 U.S.C. §105 (d)  
FOR A STATUS CONFERENCE IN CONNECTION WITH CERTAIN PENDING  
ADVERSARY PROCEEDINGS**

Upon consideration of "Trustee's Motion Pursuant to 11 U.S.C. §105 (d) for a Status Conference in Connection with Certain Pending Adversary Proceedings," dated August 15, 2007 (the "Motion") filed in each of the above-captioned adversary proceedings; and it appearing that the Court has jurisdiction over this matter; and due notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and after due deliberation and due and sufficient cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Court will conduct a 105 (d) Status Conference on August 23, 2007 at 3:30 p.m.

Dated: August \_\_, 2007  
Wilmington, Delaware

---

The Honorable Kevin J. Carey  
United States Bankruptcy Judge

**CERTIFICATE OF SERVICE**

I, Ian Connor Bifferato, Esquire, hereby certify that on this, the 15<sup>th</sup> day of August, 2007, copies of the foregoing TRUSTEE'S MOTION PURSUANT TO 11 U.S.C. §105 (d) FOR A STATUS CONFERENCE IN CONNECTION WITH CERTAIN PENDING ADVERSARY PROCEEDINGS were caused to be served in the manner indicated on the parties listed on the attached service list.

A handwritten signature in black ink, appearing to read 'Ian Connor Bifferato', is written over a horizontal line.

Ian Connor Bifferato (#3273)

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Wilmington, DE 19801

# EXHIBIT C

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 7
	)	
FACTORY 2-U STORES, INC., A/K/A	)	Case No. 04-10111 (PJW)
FACTORY 2-U, F/A/K/A GENERAL	)	
TEXTILES, INC., F/A/K/A GENERAL	)	
TEXTILES, F/A/K/A FAMILY BARGAIN	)	
CORPORATION, F/A/K/A FAMILY	)	
BARGAIN CENTER,	)	
	)	
Debtor.	)	
	)	
JEOFFREY L. BURTCH,	)	
CHAPTER 7 TRUSTEE,	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	<u>Adv. Proc. Nos.</u>
	)	
SOLED OUT SOCKS INC. /	)	05-30100 (KJC)
GMAC COMMERCIAL CREDIT,	)	
	)	
FAST FORWARD, LLC /	)	05-30156 (KJC)
GMAC COMMERCIAL FINANCE,	)	
	)	
SILVER GOOSE, INC. /	)	05-30463 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
STAR REGENT APPAREL, INC.,	)	05-30476 (KJC)
STAR REGENT INTERNATIONAL INC./	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ATLANTIC HOSIERY, INC. /	)	05-30477 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
PARK B. SMITH INC. D/B/A SMITH AND	)	05-30479 (KJC)
JOHNSON AND D/B/A PARK B. SMITH	)	
LTD., PARK B. SMITH SR. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	

ISAAC MORRIS, LTD.	)	05-53237 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ISAAC MORRIS, LTD. D/B/A E BABY,	)	06-50004 (KJC)
E-BABY L.L.C. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ALL-WAYS SPORTSWEAR, LTD. /	)	06-50035 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
GREAT WALL CORP. /	)	06-50041 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
OUTERSTUFF, LTD. /	)	06-50132 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
AMERICAN MARKETING ENTERPRISES,	)	06-50220 (KJC)
INC. /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
HAYWIN TEXTILE PRODUCTS, INC. /	)	06-50246 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
RK INDUSTRIES INC. /	)	06-50298 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
WIESNER PRODUCTS, INC. /	)	06-50365 (KJC)
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
ACCESSORY NETWORK	)	06-50378 (KJC)
GROUP, LLC A/K/A ACCESSORY	)	
NETWORK GROUP /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
AMICA APPAREL CORP. D/B/A SQUEEZE	)	06-50379 (KJC)
KIDS /	)	
GMAC COMMERCIAL FINANCE L.L.C.,	)	
	)	
<u>Defendants.</u>	)	

**PLAINTIFF'S RESPONSE TO DEFENDANT GMAC COMMERCIAL FINANCE  
LLC'S MOTION FOR WITHDRAWAL OF THE REFERENCE UNDER 28 U.S.C.  
§ 157(d) AND FED. R. BANKR. P. 5011**

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Jeoffrey L. Burtch, Chapter 7 Trustee (the "Trustee" and/or "Plaintiff") for the estate of Factory 2-U Stores, Inc. (the "Debtor" and/or "Factory 2-U") and Plaintiff in the above-captioned adversary proceedings, by his undersigned attorneys, hereby files this Response to Defendant GMAC Commercial Finance LLC's Motion for Withdrawal of the Reference Under 28 U.S.C. § 157(d) and Fed. R. Bankr. P. 5011 (the "Motion to Withdraw Reference").

### **NATURE AND STAGE OF THE PROCEEDINGS**

On January 13, 2004 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, *11 U.S.C. §§ 101 et seq.*, as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). This case converted to a case under Chapter 7 on January 27, 2005. [Main Case Docket 1757 (Order)]. Thereafter, Jeoffrey L. Burtch was appointed as interim trustee on January 27, 2005 pursuant to Section 701, and is serving as the Trustee of this Estate pursuant to Section 702(d) of the Bankruptcy Code. [Main Case Docket 1759].

Beginning in October 2005, over 800 preference proceedings were filed by the Trustee. Approximately 140 of the still pending proceedings involve a "factor" named as at least one of the Defendants (the "Factor Preference Actions"). In seventeen (17) of the Factor Preference Actions, GMAC Commercial Finance LLC ("GMAC CF") is named as a co-defendant (the "GMAC Actions"). The first complaint naming GMAC CF as a defendant was filed almost two years ago on or about October 16, 2005. In its Answers to the Trustee's Complaints filed in the GMAC Actions, GMAC CF admitted that each of these matters was a "core-proceeding." (See, e.g., Answer filed in Adv. No. 05-53237, ¶ 3, attached hereto as Exhibit A.)

GMAC CF raised as an affirmative defense in each of its Answers that the preference period transfers occurred in the ordinary course of business of the parties and as such the transfers are not avoidable pursuant to Section 547(c)(2) of the Bankruptcy Code. Contrary to the statement contained in the Memorandum in Support of GMAC CF's Motion to Withdraw Reference (the "Memorandum"), the GMAC Actions have never been consolidated for discovery, administrative or any other purpose.

Issues arose in the spring of 2007 with respect to GMAC CF's discovery responses, culminating in a Motion to Compel the Production of Documents from Defendants GMAC Commercial Credit and GMAC Commercial Finance, LLC (the "Motion to Compel") filed on or about July 26, 2007 in each of the GMAC Actions. The Motion to Compel, originally noticed for hearing on August 14, 2007, at the time of the filing of this Response is in the process of being rescheduled. Separate mediations have occurred in thirteen (13) of the GMAC Actions, and all of the GMAC Actions are currently scheduled for trial on November 18, 2007.

As is often the case, the Trustee plans to introduce payment pressure as part of its rebuttal to GMAC CF's alleged ordinary course of business defense. GMAC CF produced documents in response to the Trustee's discovery requests for all seventeen (17) GMAC Actions on January 19, 2007 (1100 pages) and on June 27, 2007 (450 pages). Certain of the materials in the June 27, 2007 production evidence communications with the Debtor regarding payments. Discovery on that topic is in part the subject of the pending Motion to Compel. It was also the subject of the Trustee's Motion Pursuant to 11 U.S.C. § 105(d) for a Status Conference in Connection with Certain Pending Adversary Proceedings (the "Motion for Conference") filed on August 15, 2007. (A copy of the Motion for Conference is attached hereto as Exhibit B.) As explained in the

Motion for Conference, the Trustee is also focusing on group activities by the Factors that collectively exerted pressure on the Debtor in terms of the preference period payments. Id. at ¶ 5.

On August 16, 2007, GMAC CF filed its Motion to Withdraw Reference and a Motion for Determination That Claims are Non-Core (the "Motion for Determination"). In its latter filing, GMAC CF requested that the Bankruptcy Court rule that the GMAC Actions are no longer core proceedings due to the Trustee's payment pressure rebuttal argument raised in response to GMAC CF's ordinary course of business affirmative defense. A copy of Plaintiff's response to the Motion for Determination ("Determination Response") is attached hereto as Exhibit C and is incorporated herein by reference.

### ARGUMENT

GMAC CF argues that withdrawal is mandatory here because the "Trustee intends to present and litigate an antitrust case in each of the" GMAC Actions. (Memorandum, at p. 5). This argument fails as it is based on an incorrect assumption. As is discussed in the Trustee's Determination Response, GMAC CF apparently believes the Trustee will expend time, effort and funds to prove violations of the Sherman and Clayton Acts merely as a means by which to rebut an ordinary course of business defense in a preference action. GMAC CF creates this fiction as a means by which to avoid the bankruptcy court's jurisdiction and to put off a final determination in the GMAC Actions. The reality is that no new claims have been filed. There are no pleadings in the GMAC Actions by the Trustee alleging and seeking damages for antitrust claims.

Rather, the Trustee is contesting GMAC CF's ability to prove its ordinary course of business affirmative defense by a preponderance of the evidence. That affirmative defense has always been part of the GMAC Actions. Based on discovery, the Trustee

asserts that payment pressure was imposed on the Debtor by vendors, by Factors, and by several Factors acting together. The actions may be anti-competitive, and they may be collusive. Regardless, the intent is to rebut GMAC CF's ordinary course of business affirmative defense. There is no conflict between antitrust laws and the Bankruptcy Code that the Bankruptcy Court is being called upon to adjudicate, and withdrawal is not mandatory nor necessary here.

**A. Withdrawal of the Reference in the GMAC Actions is Not Mandatory**

The district court has original, but not exclusive, jurisdiction over all bankruptcy proceedings. 28 U.S.C. § 1334(b). The bankruptcy court exercises such jurisdiction under a standing order of reference, as provided by 28 U.S.C. § 157(a). Once a title 11 proceeding has been referred to the bankruptcy court, the district court's authority to withdraw the reference is governed by 28 U.S.C. § 157, which provides for both mandatory and permissive withdrawal.

GMAC CF argues that the withdrawal of the reference is mandatory in this case because "...the Trustee seeks to present a rebuttal case in the Adversary Proceedings alleging antitrust violations." Memorandum, at p. 5. GMAC CF further argues that "...it has become clear" that the Trustee intends to "...present and litigate..." an antitrust case in each of the Adversary Proceedings. *Id.* As a result of this erroneous assumption, GMAC CF claims that the GMAC Actions implicate both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce and therefore mandatory withdrawal is required under 28 U.S.C. § 157(d). GMAC CF misrepresents both the position of the Trustee in the GMAC Actions and the relevant case law on mandatory withdrawal in order to arrive at these erroneous assumptions and conclusions.

First, the Trustee does not “intend to present and litigate” an antitrust case in any current Factor Preference Action before the Bankruptcy Court. The Trustee has not and is not requesting to amend any of its complaints to include claims under the Sherman Act or Clayton Act. The Trustee filed his Motion for Conference merely to advise the Court of the status of the Factor Preference Actions and the possible need for judicial intervention at some point regarding discovery and scheduling issues. A clear reading of that Motion, attached hereto as Exhibit B, shows that it does not set forth antitrust claims to be pursued in the Factor Preference Actions.

Second, as GMAC CF is well aware, the evidence the Trustee intends to rely upon, showing payment pressure tactics utilized by various preference defendants as the Debtor slid into bankruptcy, is the type of information asserted in the normal course in preference actions. Numerous courts, including the Third Circuit, have ruled that unusual creditor pressure can defeat the ordinary course of business defense. *See, e.g., Fiber Lite Corp. v. Molded Acoustical Prods. (In re Molded Acoustical Prods.)*, 18 F.3d 217, 228 (3d Cir. 1994), citing, *Extra, Inc. v. Seawinds Ltd. (In re Seawinds Ltd.)*, 888 F.2d 640, 641 (9<sup>th</sup> Circuit 1989); *Marathon Oil Co. v. Flatau (In re Craig Oil Co.)*, 785 F.2d 1563 (11<sup>th</sup> Cir. 1986) (unusual creditor pressure was not in the ordinary course of business); *Florida Steel Corp. v. Stober (In re Industrial Supply Corporation)*, 127 B.R. 62 (M.D. Fla. 1991)(unusual creditor pressure alone could negate an ordinary course defense). Thus, Article III Courts have already held that payment pressure is a “judicially-created” exception to the ordinary course of business defense. In addition, the Trustee is not asking any court to determine that antitrust law violations are per se exceptions to preference affirmative defenses.

Third, the case law relied upon by GMAC CF for the alleged proposition that the existence of an antitrust claim requires mandatory withdrawal does not in fact stand for that principle. GMAC CF relies upon *In the Matter of Vicars Ins. Agency, Inc.*, 96 F.3d 949 (7<sup>th</sup> Cir. 1996), an opinion in fact that supports the Trustee's position that withdrawal need not occur here. Of note, the underlying cause of action in *Vicars* concerned RICO violation claims. The Bankruptcy Court was called upon to determine aiding and abetting RICO liability claims, and even in that situation both the District and Circuit Courts found that neither mandatory nor permissive withdrawal was warranted.

The Seventh Circuit noted the mandatory withdrawal provision is to be read narrowly to prevent delaying tactics, the draining of the debtor's resources, forum shopping and unnecessary litigation. *Id.* at 952. The Trustee submits these motives may be ascribed to GMAC CF. The burden is on the movant GMAC CF to show that substantial and material consideration of non-bankruptcy law is required. *Id.* at 953. Even if the non-Title 11 issue is outcome determinative, withdrawal is not required. *Id.*<sup>1</sup> GMAC CF has not and cannot meet these standards.

The *Vicars* Court also looked at the question in terms of determining significant open and unresolved issues regarding non-Title 11 law. *Id.* at 954. GMAC CF characterizes the question here as whether an antitrust violation is an "exception to Section 547". (Memorandum, at p. 5). While the Trustee does not agree with this description, even if true it does not require withdrawal as GMAC CF has defined the

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<sup>1</sup> All these principles have also been adopted by this Court. *See, e.g., Pension Benefit Guaranty Corp. v. Smith Corona Corp.*, 205 B.R. 712 (D. Del. 1996) (ERISA violation claims did not necessitate mandatory or permissive withdrawal); *In re: Columbia Gas System, Inc.*, 134 B.R. 808 (D. Del. 1991) (allegations regarding the federal Natural Gas Act, Natural Gas Policy Act and the Decontrol Act did not necessitate mandatory or permissive withdrawal).



novel issue as one requiring determination of Title 11 issues, an area particularly well suited to the Bankruptcy Court's expertise.

**B. GMAC CF has Failed to Show Cause to Withdraw the Reference**

GMAC CF's second attempt at avoiding Bankruptcy Court jurisdiction is a threat that if it loses the GMAC Actions, it will appeal the decisions all the way to the Third Circuit Court of Appeals. GMAC CF claims that cause exists to withdraw the reference under the permissive provision of Section 157(d). The "cause" here being that if the Court finds in favor of the Trustee, GMAC CF will appeal and if the reference is withdrawn before it loses, there will be one less level of review before reaching the Third Circuit, i.e., removing the bankruptcy court from the picture will "promote the administration of these proceedings..." (Memorandum, at p. 6.)

Withdrawal from the bankruptcy court is permissive under Section 157(d) "for cause shown." 28 U.S.C. § 157(d). As the movant, GMAC CF bears the burden to show such cause exists. *In re Pruitt*, 910 F.2d 1160, 1168 (3d Cir. Pa. 1990); *In re Am. Capital Equip., LLC*, 325 B.R. 372, 375 (W.D. Pa. 2005); *In re NDEP Corp.*, 203 B.R. 905, 907 (D. Del. 1996). Although the phrase "for cause shown" is not defined in the statute, the Court of Appeals for the Third Circuit has set forth five factors that a district court should consider in determining whether "cause" exists for permissive withdrawal. These factors include: (1) promoting uniformity of bankruptcy administration; (2) reducing forum shopping and confusion; (3) fostering economical use of debtor/creditor resources; (4) expediting the bankruptcy process; and (5) the timing of the request for withdrawal. *In re Pruitt*, 910 F.2d at 1168.

In addition, district courts also consider whether the parties have requested a jury trial in determining whether "cause" exists for permissive withdrawal. Assertion of a

right to a jury trial, however, even when coupled with a refusal to consent to such trial before the bankruptcy court, is not of itself sufficient cause to justify discretionary withdrawal. *In re Northwestern Institute of Psychiatry, Inc.*, 268 B.R. 79, 84 (Bankr. E.D. Pa. 2001); *see also RFE Industries, Inc. v. Anton Noll, Inc.*, No. 99-334, 2002 U.S. Dist. Lexis 26414, \*10-12 (D.N.J. April 23, 2002). Finally, whether the action sought to be withdrawn is a core or non-core proceeding is relevant in determining whether “cause” exists for permissive withdrawal. *See In re NDEP*, 203 B.R. at 908. The fact that a matter is non-core, however, does not require withdrawal of the reference. *See infra* pp. 9-10.

GMAC CF has completely failed to establish any of the permissive standards for withdrawal of the reference. *In re Pruitt*, 910 F.2d at 1168 (stating that 28 U.S.C. § 157(d) “requires in clear terms that cause be shown before the reference can be withdrawn”). In fact, despite GMAC CF’s assertions to the contrary, the permissive withdrawal factors outlined by the Third Circuit weigh strongly in favor of retaining the case under the Bankruptcy Court’s jurisdiction. *See, e.g., In re Allegheny Health Education and Research Foundation*, No. 06-1469, 2006 U.S. Dist. Lexis 91548 (W.D. Pa. Dec. 16, 2006) (permissive withdrawal denied where movant failed to show cause); *In re GGC, LLC*, 2006 U.S. Dist. Lexis 69163, \*4-5 (same); *In re American Capital Equipment*, 325 B.R. at 378-380 (same); *In re Philadelphia Training Center Corporation*, 155 B.R. 109, 112 (E.D. Pa. 1993) (same); *Hatzel & Buehler, Inc.*, 106 B.R. 367, 370-71 (D. Del. 1989) (same); *Valley Forge Plaza Associates v. Fireman’s Fund Insurance Companies*, 107 B.R. 514, 518 (E.D. Pa. 1989) (same).

Leaving the GMAC Actions with the Bankruptcy Court promotes uniformity in bankruptcy administration. *See, e.g., In re GGC, LLC*, 2006 U.S. Dist. Lexis 69163, at

\*4-5 (withdrawal of reference denied where uniformity of bankruptcy administration furthered by remaining in bankruptcy court, even though a non-core proceeding); *In re American Capital Equipment*, 325 B.R. at 378. The Bankruptcy Court is extremely familiar with the Factor Preference Actions and the discovery that has taken place to date. The Bankruptcy Court has overseen discovery and has held all the pre-trial conferences since the initial filing of the GMAC Actions in October 2005.

Consequently, the Bankruptcy Court has intimate knowledge of the relevant parties to the GMAC Actions, the basis for the Trustee's preference claims, and the outstanding discovery issues. Allowing the Bankruptcy Court to determine the validity of GMAC CF and other Factor Defendants' defenses will promote administrative and substantive uniformity. *See In re GGC, LLC*, 2006 U.S. Dist. Lexis 69163, at \*4-5 (finding that retaining the reference in the Bankruptcy Court promoted the uniformity of bankruptcy administration where the underlying bankruptcy, which included 646 docket entries, had been with the Bankruptcy Court for 19 months); *In re American Capital Equipment*, 325 B.R. at 378 (finding that retaining the reference in the Bankruptcy Court promoted the uniformity of bankruptcy administration where the Bankruptcy Court was "already familiar with [the debtor's] negotiation of the proposed plan, and the terms thereof, which facts [we]re the basis of [the] adversary complaint").

In addition, retention of the reference by the Bankruptcy Court will avoid forum shopping and confusion. *In re Pruitt*, 910 F.2d at 1168. One may presume that GMAC CF hopes to evade the long history of these matters in the Bankruptcy Court by securing jurisdiction in the District Court and attempting to delay matters by injecting a "red herring" of supposed antitrust issues into the case. That, however, is not a valid reason

for the Court to withdraw the reference of a proceeding properly pending before the Bankruptcy Court. *See In re American Capital Equipment*, 325 B.R. at 379.

Further, as previously stated, the Bankruptcy Court is familiar with the parties and the “factor” issues. The Trustee has other non-factor and Factor preference cases pending before the Bankruptcy Court; thus, retaining the reference in the Bankruptcy Court eliminates any possibility of confusion with regard to the relevant issues in the GMAC Actions.

Despite GMAC CF’s convoluted contention otherwise, retention of the GMAC Actions by the Bankruptcy Court will foster economical use of the Debtors’ and creditors’ resources. Specifically, it will keep the parties in one court and before one judge. *See In re GGC, LLC*, 2006 U.S. Dist. Lexis 69163, at \*4-5 (finding that allowing the Bankruptcy Court to retain the reference “is plainly in the interest of the debtor and . . . Defendants since it will be proceeding before the same judge that is handling the underlying bankruptcy case, up until trial.) Judicial resources will not be wasted, as the Bankruptcy Court is uniquely qualified, through its unmatched familiarity with the issues underlying the GMAC Actions, to manage the matters on an expeditious and economical manner. In addition, retaining the reference in the Bankruptcy Court will not require a duplication of effort by the District Court.

Thus, in a core proceeding, which GMAC CF long ago conceded was the case, the Bankruptcy Court should resolve the GMAC Actions. Assuming *arguendo* if the Bankruptcy Court finds the actions are non-core proceedings, the Bankruptcy Court, in exercising its “related to” jurisdiction, will submit proposed findings of fact and conclusions of law to the District Court, which will be considered in entering any final

order or judgment. 28 U.S.C. § 157(c); *In re American Capital Equipment*, 325 B.R. at 379 n.1.

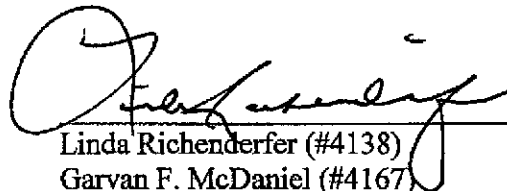
If the Court follows GMAC CF's line of reasoning, all contested matters would need to be withdrawn to the District Court because there is a chance of appeal. This is clearly not the standard for permissive withdrawal.

**CONCLUSION**

WHEREFORE, the Trustee respectfully requests that the Court enter an Order denying Defendant GMAC Commercial Finance LLC's Motion for Withdrawal of the Reference Under 28 U.S.C. § 157(d) and Fed. R. Bankr. R. 5011, and granting such other and further relief as is just and proper.

Dated: September 7, 2007  
Wilmington, Delaware

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**CERTIFICATE OF SERVICE**

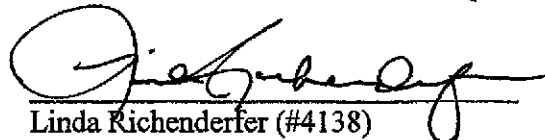
I, Linda Richenderfer, Esquire, hereby certify that on this, the 7<sup>th</sup> day of September, 2007, copies of the foregoing PLAINTIFF'S RESPONSE TO DEFENDANT GMAC COMMERCIAL FINANCE LLC'S MOTION FOR WITHDRAWAL OF THE REFERENCE UNDER 28 U.S.C. § 157(d) AND FED. R. BANKR. P. 5011 were caused to be served on the following via Hand Delivery.

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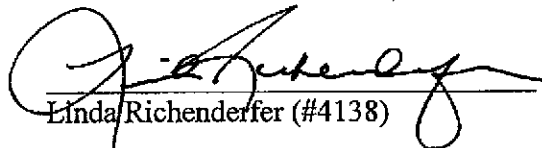
I, Linda Richenderfer, Esquire, hereby certify that on this, the 7<sup>th</sup> day of September, 2007, copies of the foregoing PLAINTIFF'S RESPONSE TO MOTION OF DEFENDANT GMAC COMMERCIAL FINANCE LLC FOR DETERMINATION THAT CLAIMS ARE NON-CORE were caused to be served on the following via Hand Delivery.

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